TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 129.

THE UNITED STATES, APPELLANTS,

vs.

THE PHILADELPHIA AND SOUTHERN MAIL STEAMSHIP COMPANY, CLAIMANTS OF THE STEAMSHIP JUNIATA, ETC.

No. 130.

THE PHILADELPHIA AND SOUTHERN MAIL STEAMSHIP COMPANY, CLAIMANTS OF THE STEAMSHIP JUNIATA, AND C. SCHNEIDER, APPELLANTS.

vs.

THE UNITED STATES.

FILED OCTOBER 13, 1875.

No. 628.

GEORGE PURSGLOVE, APPELLANT,

vs.

THE STEAMSHIP JUNIATA, ETC., ET AL.

FILED APRIL 8, 1876.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

SUPREME COURT OF THE UNITED STATES.

No. 129.

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THE PHILADELPHIA AND SOUTHERN MAIL STEAMSHIP COMPANY, CLAIMANTS OF THE STEAMSHIP JUNIATA, ETC.

No. 130.

THE PHILADELPHIA AND SOUTHERN MAIL STEAMSHIP COMPANY, CLAIMANTS OF THE STEAMSHIP JUNIATA, AND C. SCHNEIDER, APPELLANTS,

vs.

THE UNITED STATES.

No. 268.

GEORGE PURSGLOVE, APPELLANT,

vs.

THE STEAMSHIP JUNIATA, ETC., ET AL.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

GEORGE PURSGLOVE *vs.* STEAMSHIP JUNIATA. } No. 7206.

UNITED STATES *vs.* STEAMSHIP JUNIATA. } Consolidated cases.

Transcript from the district court of the United States, district of Louisiana. Filed April 23rd, 1874.

PART 1ST.

Libel.

U. S. district court, in admiralty.

GEORGE PURSGLOVE *vs.* STEAMSHIP JUNIATA, HER TACKLE, APPAREL, &c. } No. 9852.

To the Hon. Edward H. Durell, judge of the district court of the United States for the district of Louisiana:

The libel of George Pursglove, of the parish of Jefferson, State of Louisiana, owner of the steam harbor tug-boat Neafie, against the
2 iron propeller steamship Juniata, her tackle, apparel, and other furniture, and all persons lawfully intervening for their interest in the same in a cause of tort and damage, civil and maritime, alleges as follows:

1. That your libellant, at the time of the collision and damage in the third article mentioned, was the owner of the steam *and* harbor tug and jobbing boat Neafie, with her engine, boilers, machinery, tackle, apparel, and other furniture, and that said boat was then used and employed in towing ships, other vessels, rafts, etc., from place to place in the port of New Orleans, and in performing jobs between New Orleans an*t* the various points and places in the neighborhood of said city on the lower coast of the Mississippi River.

2. That on the 10th of February, 1872, the said tug-boat Neafie was engaged, in the regular course of her trade, in towing a flat-boat loaded with cement for the United States, under a contract for one hundred and sixty dollars, from the steamship-landing, Jackson Square, New Orleans, to Fort Jackson, and had reached, between the hours of
3 ten and eleven p. m., a point about one mile and a half below Poverty Point, on the Mississippi River, and some thirty miles below the city, where she had a perfect right to be; that she was tight, staunch, and strong, and in every respect well manned, tackled, appareled, and appointed, and the flat-boat she had in tow was in good order and well conditioned, and properly and carefully guarded and steered; that, in this condition, the said steamer Neafie, with her signal-lights

all burning, with the usual and necessary complement of officers and men on board, and the master and crew all at their posts, on duty, was keeping close to the left bank of the river, leaving room, ample and more than usual, unobstructed room, for the free, safe, and convenient passage of all descending steamers.

3. That when the said tug was thus prudently and guardedly proceeding, at a short distance below Poverty Point, the steamship Juniata, whereof Peirce F. Hoxie was master, then on her way from the port of New Orleans to sea, an iron propeller of great weight,
4 tonnage, and power, descended the river until she came to Poverty Point, under a full head of steam, and, instead of keeping on the course of vessels descending the Mississippi, as it was her duty to do, steered with great velocity almost directly across the river, pointing straight for the said tug-boat Neafie, and with great force and violence ran into and collided with her and the flat-boat she had in tow.

4. That the night of February 10th, 1872, was a fair night for running on the Mississippi, and had the steamship Juniata been properly steered and skillfully navigated, and blown her steam-whistle, as she was bound to do, such collision would not have happened; but she was improperly and unskillfully, lawlessly and recklessly steered and navigated; and through her own fault and negligence, and disregard of law and the usual course of navigation, and the utter carelessness and wanton and malicious mismanagement of the master and officers and crew, she came steadily and rapidly upon and ran into the Neafie and the flat-boat.

5. That the steamship Juniata struck the Neafie with great force
5 and violence forward of her pilot-house on the starboard side, causing her to careen, and throwing her with great force towards the shore on her port side; knocked away and took the head completely out of the flat-boat which the Neafie had in tow, and which in consequence thereof soon filled and sunk with her entire cargo; and that the collision hurled libellant, who was on the roof of the pilot-house of the Neafie, watching the movements of the steamship Juniata, fifteen to eighteen feet from the said pilot-house to the deck below, broke three of his ribs, produced concussion of his brain and spinal cord, rendered him insensible, and has ever since confined him to his bed; has subjected him to great pain, anguish, and suffering of mind and body; to heavy expense for surgical and medical aid and treatment; to serious and ruinous losses in business, throwing him out of employment and trade, injuring his tug-boat to the amount of one thousand and fifty dollars, and, according to the annexed Exhibit A, depriving him of the towage,
6 to wit, one hundred and sixty dollars, of the flat-boat, which was destroyed, and other towage to the amount of twenty dollars, and according to said exhibit; and incapacitating him for a long time, and probably permanently, from following his vocation.

That libellant has a wife and six children for whom he was able to provide abundantly by the profits of his business; that up to the time of the collision and damage and injury done him, he was a strong and active working-man, quite popular and prosperous, accustomed to make two thousand dollars per month during the business season, and to secure employment for each coming year; but that in consequence of the injury done him and described in this libel, he is now crippled, lives in pain and reduced in circumstances without an opportunity of forming contracts to provide for the future, and that he has sustained damages to the amount of twenty thousand dollars, which were occasioned, as aforesaid, by the utter carelessness and wanton and malicious mis-

management and tortious conduct of the persons on board the steamship Juniata, her master and crew.

7 6th. That since the said tort was committed libellant has applied to Crevy & Farwell, the consignees of the said steamship, and requested them to settle with him for the damages afore-mentioned, and that the said consignees refuse altogether to do so, and deny the liability of the Juniata for the same.

7. That said steamship Juniata is now lying within the port of New Orleans, and within the jurisdiction of this court; and that libellant has an admiralty lien upon the said steamship, her tackle, apparel, etc.

8. That all and singular the premises are true and within the admialty and maritime jurisdiction of the United States and of this honorable court.

Wherefore libellant prays that process in due form of law, according to the course of this honorable court, in cases of admiralty and maritime jurisdiction may issue against the said steamship Juniata, her tackle, apparel and other furniture; and that all persons having any interest therein may be cited to appear and answer all and singular

8 the matters aforesaid; and that this honorable court would be pleased to decree the payment of the damages aforesaid, with all interest, costs, and proctor's fees; that the said steamship Juniata, her tackle, apparel, etc., be decreed to be sold in satisfaction of said demand; and that libellant may have such other and further relief as in law and justice he may be entitled to receive.

GEORGE PURSGLOVE.

Subscribed and sworn before me this 5th day of March, A. D. 1872.

GEORGE BLODGET,
U. S. Commissioner, District of Louisiana.

CARLETON HUNT,
RANDELL HUNT,
Proctors.

EXHIBIT A.

Injuries done on the hull, &c., of the steam harbor tug-boat Neafie by the collision in the foregoing libel set forth:

Iron plating buckled or bent in between nine ribs on the starboard bow, requiring for repair according to survey	$650 00
Injury to deck and house on deck, the same being sprung and displaced, requiring, etc	100 00
9 Dock charges and demurrage for the performance of the above work, requiring, etc	275 00
Towage contracted for the United States and lost by Neafie by the said collision, towage of flat-boat to Fort Jackson	160 00
Other towage contributory to the loading of said flat-boat for the United States	20 00

Order.

Let admiralty process issue as prayed for.
March 7th, 1872.

I. A. CHARBONNET,
Dy. Clerk

Release.

United States district court, district of Louisiana, ss.

GEO. PURSGLOVE
vs.
STEAMSHIP JUNIATA. } No. 9852.

The President of the United States of America to the marshal of the district of Louisiana or his lawful deputy, greeting:

Whereas P. F. Hoxie, master and lawful bailee for the owners of said steamship, hath this day filed a claim thereto, on behalf of said owners, and which claim is now of record in this office:

You are hereby authorized to release the said steamship from
10 seizure and her to restore to the possession and custody of said claimant, he having given bond, conditioned as required by law, and otherwise complied with the rules of the court, etc., and make return hereon of your doing in the premises.

Witness the Hon. Edward H. Durell, judge of said court, at New Orleans, this 9th day of March, A. D. 1872, and the 96th year of the Independence of the United States.

I. A. CHARBONNET,
Deputy Clerk.

Bond for release of ship.

United States of America, district of Louisiana.

Know all men by these presents that we, Pierce F. Hoxie, master and lawful bailee for the claimant and owner of the steamship Juniata, as principal, and C. Schneider, as surety, are held and firmly bound unto George Pursglove, libellant, in the sum of twenty-one thousand dollars, lawful money of the United States of America; for the payment whereof to the said libellant, his heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

11 Witness our respective names and seals, hereunto affixed by us, at New Orleans, this 6th day of March, one thousand eight hundred and seventy-two.

Whereas, an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suit of Geo. Pursglove vs. steamer Juniata, her tackle, apparel, and furniture, and numbered 9852, on the docket of the said court, commanding the marshal to seize and take into his possession the said steamship, which has been seized accordingly, but has been released from said seizure, and delivered to the master and bailee thereof, by reason of the signing, sealing, and delivery of these presents, said having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such, that if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the
12 final decree rendered in the court to which the process is return-

able, or in any appellate court, the foregoing is to be void; but otherwise shall remain in full force and virtue.

PIERCE F. HOXIE. [L. S.]
C. SCHNEIDER. [L. S.]

Signed, sealed, and delivered in the presence and in open court.

K. LOEW,
Deputy Clerk.

Bond for costs.

United States of America, district of Louisiana, ss.

To wit: Personally appearing before me, the undersigned, a deputy clerk for the U. S. dist. court for the district of Louisiana, aforesaid, Edward M. Ivens & Co., for Geo. Pursglove, as principal, and C. H. Jones, as surety, do hereby acknowledge themselves jointly and severally to be indebted unto the officers of this court in the full sum of two hundred and fifty dollars, lawful money of the United States, to be levied of their goods, chattels, lands, and tenements, the use of the said officers; and for the payment whereof they jointly and severally
13 bind themselves, their heirs, executors, and administrators firmly by these presents.

Whereas, in the matter of Geo. Pursglove vs. Steamship Juniata, No. 9852 of the docket of the district court of the United States for the district of Louisiana, a libel has been filed on behalf of George Pursglove:

This obligation to be null and void on condition that the said principal and surety shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court; otherwise this obligation to remain in full force and virtue.

EDWARD M. IVENS & CO., [L. S.]
Per GEORGE PURSGLOVE. [L. S.]
C. H. JONES. [L. S.]

Signed and sealed, at the city of New Orleans, this 7th day of March, 1872, in presence of—

I. A. CHARBONNET,
Deputy Clerk U. S. District Court.

14 *Claim.*

United States district court, district of Louisiana. In admiralty.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATA, MASTER, AND OWNERS. } No. 9852.

Now comes Pierce F. Hoxie and says that he is the master of the said steamship Juniata libelled herein, and as such is the lawful bailee of said steamship, her tackle, apparel, and furniture, and that the Philadelphia and Southern Mail Steamship Company, a duly incorporated body under the laws of Pennsylvania, and domiciled in the city of Philadelphia, is the true and bona fide owner of the said steamship,

and that no other person is the owner thereof; and that he is desirous that said steamship, her tackle, apparel, and furniture may be released to him as bailee of said steamship upon executing such bond, with good and solvent surety, as the court may direct.

PIERCE F. HOXIE.

Sworn to and subscribed before me March 9th, 1872.

I. A. CHARBONNET,
Deputy Clerk.

15 *Answer.*

To the honorable the judge of the district court of the United States, district of Louisiana.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATA. } No. 9852. In admiralty.

The answer of Pierce F. Hoxie, master and claimant of the steamship Juniata, in behalf of the Philadelphia and Southern Mail Steamship Company, the owner thereof, to the libel of George Pursglove, in a cause of collision.

And now comes Pierce F. Hoxie, master of the steamship Juniata, and intervening for the interest of the owner of said steamship, and for answer to the libel and complaint of George Pursglove against the steamship Juniata, her machinery, boats, tackle, apparel, and furniture, doth allege and propound as follows:

1. That the Philadelphia and Southern Mail Steamship Company is the true and bona fide owner of said steamship Juniata, and that no other person is the owner thereof, and that he, the said Pierce F. Hoxie, is now the master of said steamship, and as such master has the
16 possession and is the lawful bailee thereof for the said Philadelphia & Southern Mail Steamship Company.

2. Answer to 1st article of said libel: Respondent avers that the matters and things contained in said article are not within his knowledge, and he neither confesses nor denies the same, but will require strict proof thereof.

3. Answer to 2d article of said libel: Respondent avers that the matters and things contained in said article are in great part falsley and untruly alleged and pleaded, and the facts and truth are, and respondent doth so allege and propound, that on the night of the 10th February, 1872, about 10 o'clock, or a few minutes thereafter, the steam-tug Neafie, with a scow or flat-boat lashed to her port side, was near the middle of the Mississippi, a short distance below Poverty Point; that said steam-tug was not tight, staunch, and strong; that she was not well manned and in charge of proper, skillful, and efficient officers; that she had no regularly-licensed pilot on board, as required by law; and respondent avers further that she had no proper signal-lights,
17 nor any lights which would indicate her character as a steam tug-boat in charge of a tow, or the direction in which she was moving; that she was not properly handled and steered, but that she was most carelessly, negligently, unskilfully, and recklessly handled and steered; that she had no proper lookout on watch; that the scow or flat-boat which the steam-tug had in tow was not tight, staunch, in good order, and well conditioned, nor was it properly guarded and steered, and that there were no lights on the scow or flat-boat, as re-

quired by law, and that she was carelessly, negligently, and recklessly handled and steered.

4. Answer to 3rd article of libel: Respondent avers that the matters and things contained in said article are in great part falsely and untruly alleged and pleaded; and the facts and truth are, and respondent doth so allege and propound, that the steamship Juniata, an iron propeller of about 1,215 tons, whereof respondent was and is master, steamed on a voyage from the port of New Orleans, bound for the port of Phil-
18 adelphia, leaving the port of New Orleans about seven o'clock p. m. of the tenth day of February, 1872; that said steamship was and is tight, staunch, and strong, properly equipped and manned with a full complement of skilful and efficient officers and crew, and in charge of a skilful and efficient pilot; that said steamship proceeded on her voyage down the Mississippi from the port of New Orleans, in the usual and proper course of navigation, until shortly after ten o'clock of the night of the tenth of February aforesaid, after having passed the point known as Poverty Point, a short distance, (which is on the left bank of the river,) and when about the middle of the river, and intending to descend the river near the right bank, in the stretch below, as is usual and customary in that part of the river, with all her lights set, a lookout stationed forward, when George L. Phillips, the pilot of said steamship, who was on deck in front of the pilot-house, being on watch and on the lookout, discovered a vessel (which afterwards proved to
19 be the steam-tug Neafie, with a tow,) well on the port bow of the steamship Juniata, without any of the usual and necessary lights to indicate her character or course, about the middle of the river, and about a thousand or twelve hundred yards distant; that immediately upon discovering this vessel, the helm of the steamship Juniata was ported in order to pass between said vessel and the right bank of the river; that shortly after, when nearing the usual signalling distance, the said vessel blew one blast of her steam-whistle indicating that she could go to the right, and immediately thereafter one signal of one blast of her steam-whistle was given by the Juniata in answer thereto; that it being the duty of an ascending boat to select or choose the side on which she would pass, the officer on watch on said steamship, when said steam-tug gave said signal, was satisfied that it was an ascending steamer (although no light, except one white light was visible on her,) and ported the helm of the steamship still more, in order to give said steam-tug an abundance of sea room to pass on the larboard side of said steamship; that almost immediately thereafter it was discovered that said
20 steam-tug was crossing the river, approaching rapidly the course or track which the steamship Juniata was pursuing, which was at the time east-southeast, and the proper course; that thereupon the engines of the Juniata were reversed, and she commenced backing, in order to stop her as quickly as possible, and her helm was put hard aport, but that despite all the efforts of the officers and crew in charge of the Juniata to avoid a collision, and despite the crying out of the pilot of the steamship Juniata to those in charge of the steam-tug Neafie, "Where are you coming to?" the steam-tug continued her course with her helm aport, (which brought her across the course of the steamship,) and with her tow ran into and struck the steamship Juniata on her larboard side about ten feet abaft the fore rigging; that at the moment of collision the steamship had steerage way only, and was near the right bank of the river; that it was with great difficulty that the steamship was saved from going aground after the collision occurred by putting her helm hard astarboard.

That those in charge of the steamship did everything in their power
21 and that was possible to be done, to avoid the said collision, which was caused solely by the unskilfulness, mismanagement, reckless conduct, and ignorance of those in charge of said steam-tug. That those in charge of said steam-tug must have seen the larboard light of the steamship, and known that she was steering so as to pass on the starboard of the steam-tug; that the one blast of her signal, given by the Juniata, must have indicated to those in charge of the steam-tug (if they knew their duty) that the Juniata was going to the starboard of the steam-tug, descending to the right bank of the river; that, notwithstanding all this, instead of keeping on their course, as it was their duty to have done, they ported the helm of the steam-tug, making her course across that of the steamship; that in consequence of this illegal, reckless, and unwarrantable conduct on the part of those in charge of the steam-tug, the Juniata, while passing the steam-tug, (the latter continuing to carry a port-helm, thereby throwing her with
22 her tow across the course of the steamship,) struck with her tow the steamship about ten feet abaft the fore rigging, and swung along the larboard side of the steamship, bringing the steam-tug, which was on the starboard side of the tow, against the side of the steamship Juniata. That such was the course of the steam-tug at the moment of collision that she would have run into the right bank of the river, inevitably, in a few moments, had she not collided with the steamship Juniata.

Respondent avers that there were not two lights, one above the other, on the steam-tug at the time of the collision, as are required by law; nor were there any lights whatever on the scow or flat-boat which she was towing.

Respondent avers that after the collision the Juniata waited to see if any assistance was wanted, but that no signal of distress of any kind being given, and the steam-tug being apparently undamaged, the steamship then proceeded on her voyage. And respondent avers that
23 he had no knowledge of the sinking of the scow or flat-boat, until after reaching Philadelphia, when he was advised by letter of the fact. And respondent alleges and propounds that all the matters and things alleged in said 3d article of said libel, differing from the foregoing statement of this article, are untrue, and falsely alleged and pleaded.

5. Answer to the 4th article of said libel: Respondent admits that the night of the 10th February, 1872, was a reasonably fair running night; and avers that the steamship Juniata was properly steered and skilfully navigated, and that she was in charge of one of the oldest, most skilful and experienced pilots on the Mississippi River; and respondent denies that there was any negligence or fault, or disregard of the rules of navigation whatever on the part of those in charge of the Juniata; and respondent avers that when the steam-tug Neafie blew one blast of her whistle, as hereinbefore stated, which was immediately answered by the Juniata, the two vessels were more than 800 yards apart; that this signal was given by the steam-tug before the two
24 vessels were within the usual signaling distance, and thus those on the steamship Juniata were misled to believe that it was an upward-bound vessel, whose lights were, from some cause, out, and intended going to the right, as her signal indicated. Respondent avers that the collision was caused solely by the ignorance, unskilfulness, mismanagement, and recklessness of those in charge of the steam-tug; and respondent denies that the steamship Juniata ran upon or into the steam-

tug, but avers that the course of the steam-tug was nearly directly across the bows of the steamship, and had the helm of the steam-tug been put astarboard at any time prior to the collision, she would not have struck the steamship Juniata at all.

6. Answer *of* the 5th article of said libel: Respondent avers that the matters and things herein alleged and pleaded in said 5th article touching the collision are untrue; and avers that the same are as they are alleged and set forth in the 4th article of this answer.

And respondent avers that as to the personal injuries or losses
25 suffered therefrom or thereby, or of the amount of damages to libellant's steam-tug, or for the losses from failure to secure towage, or of the condition of libellant's family or business, he has no personal knowledge, and neither admits nor denies the same, but will require strict proof thereof; but respondent specially denies that he is liable in damages to libellant in any sum whatever, or for any cause whatever.

7. Answer to the 6th article of said libel: Respondent denies that any tort whatever has been committed on the part of the steamship Juniata or by those in charge of her; that no such firm as Creevy & Farwell exist or has existed in New Orleans for many years, and respondents has no knowledge of any application on behalf of libellant to anybody to settle his claim.

8. Answer to 7th article of said libel: Respondent admits that the steamship Juniata is within the jurisdiction of this honorable court, but denies that libellant has any admiralty lien on said steamship Juniata.

26 9. Answer to the 8th article of said libel: Respondent denies that the premises as set forth to said libel are true; but avers that the facts are as are truly alleged in the 4th article and other articles of this answer, and are within the admiralty jurisdiction of this honorable court.

Therefore respondent asks that your honor will be pleased to pronounce against libellant's demand, and will decree that said libel be dismissed with costs, etc.

PIERCE F. HOXIE,
RANDOLPH, SINGLETON & BROWNE,
Proctors.

Sworn to and subscribed before me this 11th April, 1872.

I. A. CHARBONNET,
Deputy Clerk.

In admiralty. United States district court for the district of Louisiana.

GEORGE PURSGLOVE *vs.* THE STEAMSHIP JUNIATA. } No. ———.

THE UNITED STATES *vs.* THE STEAMSHIP JUNIATA. } No. ———.

Testimony taken by consent.

27 These cases are consolidated for the purpose of trial in the district court, without prejudice to any question of the rights of parties of any kind:

HENRY C. HOPPER sworn and examined for libellant:

Q. What is your business?

A. A mariner.

Q. How are you now engaged?

A. I am master of the steam-tug Neafie.

(License of witness filed in evidence, and marked "A.")

Q. You are a licensed pilot?

A. I am a licensed pilot and master.

Q. How long have you been commanding vessels, and what vessels have you commanded?

A. I have commanded vessels since 1853. I have commanded the Anglo-Celt, Anglo-Norman, American, and several tugs previous to the war; and since the war I have commanded the United States transport Morning Light, the tow-boat Landis, tugs Gladiator, America, Sunflower, Sentinel, Continental, and Neafie.

Q. How long have you commanded the Neafie?

28 A. I have commanded the Neafie a year and a half.

Q. How old are you?

A. I was fifty-three years of age the 10th of February last.

Q. Were you in command of the Neafie the night this collision occurred, the subject of this suit, and when was that?

A. The night of the 10th of February.

Q. How was the Neafie engaged on that evening?

A. She was engaged towing a flat-boat, loaded with five hundred barrels of cement for the United States Government, and left the city at five o'clock that evening from alongside the steamship Juniata, from which the cargo had been taken at Jackson Square, and proceeded down the river until about half past ten, when about a mile and a half below Poverty Point.

Q. How long did it take you to get to Poverty Point?

A. I suppose five hours or five hours and a half.

Q. How far is Poverty Point from this city?

A. Thirty miles; about half past ten o'clock, or in that neighborhood, proceeding on our way below the point, we were overtaken by the steamship Juniata, which run into the tug, striking her a glanc-

29 ing blow on the starboard bow and carrying away the end of the flat-boat loaded down with cement.

Q. At what rate were you running when this collision occurred?

A. At about three miles an hour; I had given an order to the engineer before that to go along easy as we were not in a hurry.

Q. You say you were about a mile and a half below Poverty Point; what course was you taking?—Poverty Point is on the left bank?

A. Yes, sir.

Q. And you were a mile and a half below Poverty Point?

A. Yes, sir; when I went around Poverty Point I knew the steamship Junita was astern.

Q. How did you know that?

A. There was but one steamer passed us, that was the General Sherman; and both steamers were to leave after we left; so I knew the Juniata should be astern.

Q. When did the Sherman pass you?

A. About twenty-four miles below the city, at McCall's Flats.

Q. After leaving McCall's Flats, what course did you pursue with your tug?

A. I there gave orders to the engineer to fire along easy until I got below Poverty Point, when I hauled in close to the left bank

30 to get out of the way of the descending steamers.

Q. What is the course taken by descending vessels usually on turning Poverty Point?

A. Descending vessels have to follow the bend and give the point all the berth they can, in case an ascending steamer should be coming, to be away from her.

Q. What is the reason that you, instead of going around the point and going down the middle of the river, that you went in close to the left bank?

A. Knowing I would be out of the track of the descending or ascending vessels.

Q. When you say descending vessels, what do you mean in particular?

A. The Juniata, which I knew was astern of me.

Q. How close were you in to the left bank?

A. The time she struck me I was not over sixty yards from the left bank; I was inside of the track of vessels ascending the river coming along that bank.

Q. You mean you were out of the way of an ascending vessel, even?

31

A. Yes, sir; I was between the track of an ascending vessel and the bank at the time of the occurrence.

Q. What signal-lights did you have burning?

A. The usual signal-lights—green and red lights.

Q. Name them.

A. A green light on the starboard, and a red light on the port, and two white lights, one hanging under the other, about twenty or twenty-five feet from the water's edge, on our smoke-stack.

Q. Were they visible all around?

A. No; with the exception of the smoke-stack, I presume they were visible within thirty degrees of the circle of the horizon—just the hiding of the chimney; the crane on which they hang is about two feet long from the chimney; consequently anybody aft would see them from a long distance on our quarter.

Q. Are they on the port and starboard of the chimney?

A. They are right in front.

Q. On which side of you was the flat boat?

A. On the port side—inshore.

Q. Was her bow ahead of yours?

A. Her bow was, I presume, about thirty feet ahead of us; in the neighborhood of that.

32

Q. Where were you at the time the collision happened?

A. I was at the wheel of the Neafie, steering.

Q. What other men were on duty?

A. The whole crew; every one except the fireman off duty, who was asleep.

Q. When you say the whole crew were on duty, state who they were.

A. Myself, deck-hand, engineer, fireman, cook, and watchman.

Q. What is the size of that boat?

A. About seventy-two tons.

Q. How long is she?

A. Ninety feet long.

Q. What is her crew?

A. Six men for harbor-work; when we are for a long distance we carry a double crew.

Q. When did you first see the Juniata?

A. Mr. Pursglove, the libellant, was standing on top of the pilot-house, and had been there for some time watching the Juniata; after we got below the point he leaned over on his knees,

reached over to see me and let me hear him, and told me to keep a little closer to the left bank, supposing I did
33 not see it. I told him I was close enough now to the left bank, and could see long ahead of me, and to come down, and he was in the act of raising when the steamship struck us and threw him off; I stepped to the side-door on the starboard side and looked out, and as I did so I saw the bow of the steamship coming for the middle of the boat. I reached to the handle of the gong and made a signal to the engineer to slow the boat, which he did, and *and* stopped her; whether I tapped the bell afterwards to stop her or not I am not positive, but I slowed down, which gave the steamship a chance to shoot ahead and strike us on the bow instead of midships; she passed by and struck the flat-boat, tearing the check-post out of her and nearly the whole of one end of her. At the time the ship passed us the crew told me the boat was sinking, and I let go the stern-line and tow-line we had to the flat-boat. We were then heading directly for the bank, and I rung the bell to go ahead, and I suppose she went a half a length,
34 when she raised up on the bank a foot or more. I sung out to the engineer to turn her ahead slow; I called for a lamp, which one of the men brought me, and I looked over and saw nothing apparently the matter with her hull. I went back and attended to Mr. Pursglove. The men then told me the flat-boat was laying close to our stern, and if they had a pole to reach her they could haul her alongside. I went to look at it, and having no pole I backed the tug off and went outside and shoved her on the batture as fast as I could to save her, and while working there, with the engines slowed, pushing against the flat-boat; I then went to try and save Mr. Pursglove, who was senseless and badly injured.

Q. What did you do with Mr. Pursglove?

A. Rubbed him and administered hartshorn to him to bring him to, but it was about two hours before I could get any speech from him. He then asked me what was the matter and what had happened to the boat; he had no recollection of anything that had occurred, and had not, until away along towards morning. He complained terribly of the
35 pains and bruises on his body; I discovered none, but by candle-light there may have been some that I did not see. He complained terribly of the top of his head; there was some blood, which I supposed at the time came from bleeding at his nose, which he was subject to; but that was not the case; it was where he struck.

Q. Did the Juniata stop?

A. She never stopped, but went by us apparently at full speed.

Q. Did they sing out to you?

A. Somebody sung out, "What the hell we were doing there," or "What the hell were we trying to do;" I do not know which; I made no answer.

Q. What was her speed when she passed you?

A. She passed us apparently going all of ten miles an hour.

Q. Was the Juniata in the track of descending steamers?

A. She was not.

Q. Explain why she was not.

A. Because at the time she struck us if she kept on a hundred yards further it would have placed her in a sugar-plantation; she was heading nearly across the river. The course of descending boats
36 round the point is to come round the point into the bend and steer for Wilkinson's residence, which is on the right bank, in the bend. In turning around the upper point you come down on the side the point

is on; you run down until you open the point by Wilkinson's house; you then follow the bend on the right-hand bend, steer down directly for Wilkinson's house, which carries you clear of the eddy under the point as well as the eddy in the bend above the house. You run so close to the right bank that you can toss a biscuit ashore when you are abreast of Wilkinson's residence. You then haul over for the left bank, steering an east-northeast course, which on a foggy night carries you clear of anything.

Q. What is the reason a descending vessel cannot and does not take the course the Juniata took?

A. Because by so doing she would be apt to get foul of vessels ascending the river, which generally keep the right bank coming up. The reason for that is there is no current there, and all tows or vessels coming up go for slack water to make time.

Q. Is there any other reason?

A. Ascending steamers in coming along under the point follow
37 the left bank under the point, keep well out on account of the eddy, but not sufficiently far to get into the current.

Q. Where is the eddy there?

A. It is immediately under the point; and it is not only an eddy, but shoal water, and full of roots and logs; one reason why vessels keep away from it.

Q. How does the eddy run?

A. The eddy runs up.

Q. Did the Juniata signal her approach?

A. None whatever; there was no signal made by either boat. Immediately before the collision the coast-packet Bradish Johnson landed a distance of about two miles or so below us, at a settlement there, and blew her whistle for a landing. I saw her very plainly. And immediately at the time of the collision she also made another landing and blew her whistle, probably a second or so after the collision, or it might have been at the moment. I remember hearing her signal for the landing—three blasts for the landing; I did not hear the three distinct blasts, but I heard the whistle; it may have been twice, or
38 only once; but I saw the boat plain, and saw her land, for they had torches made of pine wood, that could be seen a long distance, throwing a glow upon the water; she was landing at a store or grocery in the bend, below where the collision occurred, on the left bank; then, afterwards, she crossed over to the right bank to make a landing there.

Q. What sort of a ship is the Juniata?

A. A large, heavy iron steamship.

Q. When the Bradish Johnson first landed, was it at the same side of the river you were on?

A. Yes, sir.

Q. And the second landing?

A. On the same side also.

Q. How far from you?

A. It may have been a mile, or a mile and a half; I cannot say exactly the distance; but it was in the neighborhood of a mile, or a mile and a half, or two miles below us.

Q. Do you know, by the compass, what course you were steering when you were struck?

A. About east by north course.

Q. Can you tell us what course the Juniata was coming when you

first saw her—just immediately before she struck you—by the compass?

39 A. By the way she headed for me when I saw her, she ought to be steering northeast to bring her diagonally across the river.

Q. That would leave how many points difference in your course?

A. It would make about three points difference in our courses.

Q. About how far was the Juniata from you when you first saw her?

A. She was almost on top of the tug when I stepped to the side door.

Q. About how many feet?

A. I would not say she was over from six to ten feet from us, because on a foggy, dark night a steamer like that would not be seen any distance.

Q. Did you see her lights?

A. No; she was so high; I simply saw the bow of the steamship coming; I knew the ship by the bowsprit she had and her stem; I had my hand on the wheel, and I simply lowered my hand to the catch of the gong, and tapped the gong three times.

Q. Did you see her after she struck and started on her course again?

A. I simply saw her pass; she was out of sight directly.

40 Q. Do you know whether she changed her course after striking you?

A. She must have changed her course as she went by me, or she would have gone ashore; the course she was on would have run her into the plantation in two minutes.

Q. What change would the Juniata have to make to regain her proper position in the river for a vessel going down?

A. About three points; there was a difference of six points in her course down the bend of the river and the course she was pursuing; a change of three points would fetch her down straight.

Q. How long did you stay by the flat-boat with the cement?

A. Four hours I stayed by the flat-boat.

Q. What condition was the flat-boat in when you left her?

A. The cement was about two feet under water.

Q. All submerged?

A. All submerged.

Q. Do you know what sort of cement she had on?

A. I could not state the quality.

Q. Did you have anything to do with the loading of the flat-boat?

41 A. Mr. Pursglove loaded the flat-boat on account of Major Howell; he employed a stevedore to do it, by order of Major Howell.

Q. Do you know what the expense of loading the flat-boat was?

A. No.

Q. What was the contract for towage; do you know that?

A. No; I could not state, positively, what it was; that was a matter between Mr. Pursglove and Major Howell, and I did not trouble myself about it. After the work is done Mr. Pursglove informs me, and I put it on the books and keep the accounts.

Q. Was the lime and flat-boat a total wreck when you left it?

A. Yes, sir; a total wreck; we tried to stop the leaks with blankets, but had not sufficient blankets. The whole bow was gone.

Q. How long was it before the flat-boat filled?

A. Within twenty minutes of the time she struck.

Q. No amount of skill on the part of the officers you had on the Neafie could have saved her?

A. No.

42 Q. Did you, or any one on the Neafie, hail the Juniata?

A. No; she went out of sight so rapidly she gave us no chance to hail. She never made any inquiry whether we were injured or not, but kept on her way.

Q. Was the shock so great that it would have attracted attention on the Juniata?

A. I do not suppose a heavy ship like that would feel the shock; the shock was sufficiently great to roll us over to the water, besides the flat-boat distance, two feet in a horizontal position. A heavy vessel colliding with a small vessel like that will not feel it. I went over a fishing-vessel on the Banks once, and no one knew it until after the occurrence.

Q. What effect did the collision have on the lights?

A. Put out all the lights; the signal-lights, and everything else.

Q. How was your helm?

A. Our helm was about midship when the accident occurred. We were going so slow through the water it required but little motion of her wheel to change her course.

43 Q. When did you first come across Mr. Pursglove after the accident?

A. After the accident some one spoke to me, saying Mr. Pursglove was injured, and also that the boat was sinking. My attention was given to the boat, and I paid no attention to Mr. Pursglove then. I merely supposed he had fallen, or had a slight accident; I had no idea he was severely injured; I paid no attention to him. I run the boat ashore, and took the lamp and looked over the side and saw she was not, apparently, injured in the hull. I then turned my attention to Mr. Pursglove, and found him on deck, with a couple of men trying to put him up in the pilot-house. The floor of the pilot-house is about six feet from the deck. I helped them to get him in.

Q. What did you do to him after you revived him?

A. After I had got the flat-boat on shore I was turning the engine very slowly, to keep her in position to shove the flat-boat further on shore, and then I turned my attention to Mr. Pursglove, and administered hartshorn and rubbed him, and after I revived him I brought him up to the city.

Q. You brought him to his home?

44 A. I brought him to the foot of Canal street, when he sent for his family physician, who examined him. I then took him to his residence.

Q. How long was he confined in bed there; do you know?

A. He has been confined in his bed until the last ten days. To my knowledge he came to the city ten days ago for the first time.

Q. Have you seen him since he has been able to go out?

A. Yes, sir; he was down last week. He was weak and fatigued by riding down, and was forced to return home without attending to his business.

Q. What is general condition; is he able to go about with his usual activity?

A. No; only with sticks. He has to be very careful; cannot get out of the way of anything, not having the strength. He is older in his appearance, and not the same looking man that he was before the accident.

Q. You say he was in the act of stooping down when she struck you?

A. He had stooped down and told me to keep closer to the left bank.

45 Q. How far from the deck of the Neafie is the roof of the pilot-house on which Mr. Pursglove stood?

A. Eighteen or twenty feet; I will not be positive.

Q. Was he hurled down from that roof to the deck?

A. He was in the act of raising from his hands and knees when the ship struck and rolled the boat from under him, and he fell head-forward against the ship, and struck the ship with his head, and fell down on the cavil.

Q. You say he struck his head against the Juniata?

A. He went head-foremost, and struck his head against the Juniata, and then he fell down.

Q. You said you recognized the Juniata from her bow; what sort of a bow has she got?

A. She has got a small bowsprit and a curved stem; instead of being vertical, it is curved under the bowsprit.

Cross-examined:

Q. What is the length of the Neafie?

A. Ninety feet.

Q. What is the width of her?

A. Twenty feet.

46 Q. Whereabouts does the pilot-house stand?

A. It stands about ten feet from the extreme forward end of the boat.

Q. What part of the Juniata did Mr. Pursglove's head strike?

A. It must be he struck the port bow of the ship; I did not see him strike it, but he says he struck something; that is all he remembers.

Q. Was there anything else for him to strike in that manner?

A. Could not be anything else, because if he had not struck the Juniata he would have went overboard.

Q. From the pilot-house, in a direct line to the Juniata, how far was it?

A. Laying still alongside, the bow of the Juniata looms out and would not make it, laying alongside of the pilot-house, any more than three feet—laying still alongside.

Q. Whereabouts on the deck below did Mr. Pursglove fall?

A. Right alongside of the pilot-house.

Q. On which side of the pilot-house?

A. On the starboard side.

47 Q. How far was he from the outer edge of the Neafie?

A. He was about the middle of the pilot-house, standing about the middle.

Q. I mean the portion of the deck he fell on; how far was it from the outer edge of the Neafie?

A. About a foot from the outer edge of the Neafie; there is a gunwale about a foot wide around the outer edge, and just inside about four inches; just room enough for a hawser.

Q. You say he fell on the starboard side of the pilot-house?

A. Yes, sir.

Q. How long have you known Mr. Pursglove?

A. I have known Mr. Pursglove some six years.

Q. Is he a wealthy man?

A. No.

Q. Is he a poor man?

A. He is a workingman.

Q. How long has he been at that business in which he was engaged at that time?

A. He has been at it since 1866 or 1867, I cannot tell which; since the war he got the boat. The boat formerly belonged to the Gov-
48 ernment, and when they sold her, he and Mr. Clark became purchasers of this boat.

Q. Is he a prodigal, wasteful, dissipated man; or is he a sober, steady, economical man?

A. He is a sober, steady, economical man in everything. I have never known Mr. Pursglove to waste anything, nor is he anything mean about his boat; my orders were always to live well, and get everything that was wanted.

Q. Were you at his house?

A. Yes, sir.

Q. He lives plain, like a laboring-man?

A. Yes, sir.

Q. There is no extravagance at home?

A. No extravagance.

Q. He is still poor?

A. Yes, sir; I do not consider him anything but a poor man.

Q. How much do you suppose he is worth?

A. I could not say; maybe five thousand dollars; he may be worth double that, for what I know.

Q. How has he made that?

A. He made what little he has by the Neafie.

Q. About how much does she make clear money a year?

49 A. In a good season she ought to make from six to eight thousand dollars clear. She made about six thousand dollars clear the last nine months, but Mr. Pursglove was there to give personal supervision to the business. Since he has been sick I have done nothing of consequence—only done a little.

Q. How far over did the Neafie careen when they came together?

A. About two feet, I suppose; that is, two feet from a horizontal position.

Q. What course ought the Juniata to have been running to have been in her right course?

A. She should have been in the bend.

Q. If she was in the bend, what course would she have been pursuing?

A. If she was in the bend abreast of Wilkinson's house, to get out of that for the next bend her proper position would be east-northeast, by compass.

Q. Previous to reaching Wilkinson's when she first got into the bend?

A. In coming down the reach, before coming to Wilkinson's
50 steer nearly northeast; that reach runs nearly north and south.

Q. What kind of a night was it?

A. It was foggy and some smoke in the bend; at Poverty Point all the bank above and below was plainly in sight; a distance as far as I could see was clear; the Juniata was seen coming around the point above Poverty Point, and her course noticed by her lights.

Q. Did you stop there at the shore?

A. I shoved the flat-boat on the shore and laid there until I started up to the city with Mr. Pursglove?

Q. What time did you start up with Mr. Pursglove?

A. I suppose about two o'clock in the morning—probably three; I

only went about five miles when I was forced to come to, and I laid there until daylight.

Q. What forced you to come to?

A. Fog.

Q. Have you been back to the place where the flat-boat sunk?

A. I landed a flat-boat at the same place that the flat-boat sunk shortly afterwards.

Q. What did you land it there for?

51 A. A man living there purchased it to *to* build some houses with.

Q. Did you see anything of the wreck of the other flat-boat?

A. Yes; this man that I brought the flat-boat and brick down for, went with his men the day after the collision and tied the flat-boat fast; he got it there and was going to keep it.

Q. Did he save any of the cement?

A. No; it was all gone; it was covered with water about two feet.

Q. Was it in barrels or in bulk?

A. It was in barrels.

Q. Could not the barrels be floated out?

A. The cement coming in contact with the water was turned into mush; cement is not like flour, for cement will get saturated with water the whole depth of the barrel.

Q. Lime will also?

A. Lime will burn.

Q. Suppose it was slacked?

A. Then it will simply turn the same as cement into mortar and slush.

Q. Would it be of any account afterwards?

A. It would be of no account afterwards.

Q. Could nobody get that cement out of that?

52 A. No; it was not worth getting out.

Q. How long was it after the collision before the flat went down?

A. Twenty minutes at the furthrest before the cement was covered; it was only the power and the force of the tug-boat that forced this flat where she is now.

Q. The collision did not break the flat-boat loose from the Neafie?

A. Yes, sir.

Q. Entirely?

A. No; but sufficiently so as to make her unmanageable; the blow forced the flat-boat and steamboat across the river, heading for Poverty Point bank; on the far end of the flat is a check-post—a large tree; as they come down the river with oars, if a storm comes the crew run out on the bank with a line from this check-post in a skiff, and they stop the way of the flat boat; consequently the check-post has to be a heavy piece of timber to hold the weight of the flat-boat; the force of collision tore this check-post out of the flat-boat, and it was adrift and laying in an angle of forty-five degrees with the boat.

53 Q. The blow, if I understand you, turned the bow of your boat towards the left-hand shore—turned you right around?

A. Yes, sir.

Q. When the flat occupied that position, an angle of forty-five degrees to you, was not the stern end fastened to your vessel?

A. Yes, sir; and also a line to the stern of the tug-boat, and I let go these two lines when they told me the boat was sinking, and I ran into the bank; after discovering that the boat was not damaged, I saw the flat laying at a distance of eighteen or twenty feet astern of us; I

backed out and went outside the flat and forced her on the batture to save her; the river is about a mile wide at that point, or a little more, I think.

Q. Whe' the Juniata came into you and struck you, had you stopped your boat or rung bells to stop her, or was her headway checked?

A. She had very little headway on her; as I said before, when Mr. Pursglove told me to keep closer to the bank, I answered him I was all right, I could see the bank plainly, to come down; after telling
54 him this, as I usually do, I stepped to the side door and looked out, and the bow of the steamship loomed right up, and I then rung the gong to slow the engine, which was done; I may have rung the gong to stop her afterwards, but I do not remember doing so.

Q. Some one halload to you just at that moment, "Where the hell you were going?"

A. Yes, sir; or, "What the hell are you doing here?" I do not recollect which observation.

Q. Did you see the right shore from where you were?

A. No; in the bend there was a fog; fog generally settles in the bend.

Q. What depth of water was the flat or scow drawing?

A. I suppose about two feet and a half; not more than two feet or two feet and a half at the farther*est*.

Q. Who did you have aboard your boat?

A. Myself and the usual crew.

Q. Name them.

A. The engineer, West; fireman McFadden, fireman McVey,
55 cook, Williams, a deck-hand by the name of John something, watchman by the name of Frank Ellis, and Mr. Pursglove, the owner.

Q. You said that the pilot-house was twenty feet from the deck of your vessel?

A. Eighteen or twenty feet; it is some five or six feet higher than the cabin; sufficient to have windows in the sides to see all over the cabin.

Q. Who was standing out forward on the lookout?

A. The watchman that was on the flat-boat; my crew was on deck.

Q. What crew was on deck?

A. All except the fireman off watch; every one of the crew was on deck except the fireman who had been on watch.

Q. Did any of them inform you the Juniata was coming onto you?

A. No; they did not see her until almost the moment of collision; Mr. Pursglove saw her; I only know from what he tells me.

Q. Nobody gave you any alarm?

A. No, none whatever.

56 Q. You did nothing to avoid the collision at all?

A. I did not suppose it was necessary.

Q. You did nothing to avoid the collision in any manner, shape, or form?

A. There was no necessity.

Q. Answer my question.

A. I could not try to avoid a thing there was no necessity for; we look to facts, not to what may be.

Q. How long before the vessels came together did Mr. Pursglove speak to you about the Juniata approaching or being in the neighborhood?

A. He did not tell me anything, before she struck, about her being in the neighborhood, only what he told me since.

Q. You did not know she was in the neighborhood at all?

A. I knew she was astern, because she had left the city.

Q. You did not see her?

A. No; I had no right to know anything about her.

Q. Nobody informed you?

57 A. No; the law provides for a steamer to give me a signal when she is astern; until she does so, I have no right to recognize her being in the river.

Q. You heard no signal from her?

A. No; not a single whistle.

Q. Did you blow any.

A. No; I had no occasion; it was his duty to blow one whistle to let me know he should pass to the right hand, or if he blew two, to go inshore, I would govern myself accordingly.

Q. Did you ever hear the whistle of the Juniata at any time?

A. No; I never heard it, and would not recognize it if I heard it.

Q. You heard no whistle about that time?

A. None except from the packet-boat that was landing; heard her whistle some time before the collision, and also about the time of the collision I heard her whistle; that was the only whistle I heard.

Redirect:

Q. What is the distance between the roof of the pilot-house and the edge of the deck?

58 A. It is the narrowest part of the boat. I do not think it is over two and a half or three feet at furtherest. It is just sufficient for a wheelbarrow to pass clear of the bulwark and clear of the steps of the pilot-house.

Q. If you had not slowed your engines, what would have happened?

A. If I had not done so the steamer would have struck us right midships, which is the weakest part of the boat, right alongside of the boiler, where there is an opening.

Recross:

Q. At what angle did the Juniata strike you?

A. It is a hard matter for me to tell. I do not suppose it was over fifteen degrees, if it was that.

(Signed) H. C. HOPPER.

H. C. HOPPER, recalled for libellant, says:

It was a good night for running. The bank was clear both sides of the river, except in the bend, where the fog generally settles.

Q. What is the business of the Neafie?

59 A. Towing up and down the river, wherever she can get a job; from the mouth up to St. Louis, if she could get a job.

Q. Give us an idea of the price she gets for her jobs—of the money she earns?

A. It depends on the kind of work; prices vary. She would average a hundred and fifty dollars a day.

Q. Has there been any falling off in her business since Mr. Pursglove's illness and absence?

A. There has been a falling off of a thousand dollars a month between the receipts this year and last year at the same time.

Q. Is he not a very active man?

A. He is a very active man, and has a large circle of acquaintances about the coast, and on the river and planters.

Q. He is a popular river-man?

A. He is a very popular business man.

Q. This boat sometimes gets five hundred dollars a job?

A. Yes, sir.

Q. Name one?

A. When we go up the Yazoo River and Grand Gulf for timber
60 we get from nine hundred dollars to fifteen hundred dollars for the trip; we had several trips last season this time up there; we had one trip that paid us seventeen hundred dollars, a tow of coal-boats to Bayou La Fourche for planters. A large boat could not get in there.

Q. Who attends to the shore business of that boat and solicits business?

A. Mr. Pursglove.

Q. Has he been able to do so since the accident?

A. No; he has not.

Cross-examined:

Q. Where did you get the nine-hundred-dollar job for towing a raft?

A. Nine hundred dollars for towing a raft from Grand Gulf to the Ocean Mills, Jefferson City.

Q. What time did you leave here to go after that raft?

A. Some time last March, a year ago, I think.

Q. How long did it take you to make that trip, to go from here, get the raft, bring it down, and land it?

A. Six days.

61 Q. What wages do you get as captain?

A. A hundred and twenty-five or a hundred and fifty dollars a month; it is governed by the receipts; if the receipts amount to two thousand dollars a month, I receive a hundred and fifty dollars.

Q. How long have you been on her?

A. Eighteen months.

Q. What portion of the year do you get one hundred and fifty dollars a month?

A. I cannot name any particular season; in the winter-time is the best business; I received for the nine months last year, before we broke down, for five months out of that a hundred and fifty dollars a month.

Q. That is on two thousand dollars, gross, a month?

A. Yes, sir.

Q. For the rest you only received a hundred and twenty-five dollars a month?

A. Yes, sir; our receipts have been over two thousand dollars; they have been as high as thirty-two hundred dollars, but that would make no difference in my salary.

62 Q. What is the monthly expenses of the boat?

A. The monthly running expenses are about six hundred dollars, independent of fuel.

Q. How much fuel does she burn a month?

A. It would depend upon the work she has.

Q. Ordinary work?

A. Ordinary work, six hundred barrels of coal a month.

Q. What is the usual cost of that?

A. It is now a dollar and a half a barrel.

Q. Upon an average the coal fully averages how much?

A. Coal, about on the run, low and high prices, about five hundred dollars; with the exception of making these coast trips after rafts, we use more fuel.

Q. Since November last how many months have you received a hundred and fifty dollars a month; have you received a hundred and fifty dollars any month?

A. No; we have not run any single month more than sufficient to pay our expenses since November, and since the confinement of Mr.
63 Pursglove it has been still worse.

(Signed) H. C. HOPPER.

Testimony of JOHN MCVEY, sworn an' examined for libel'ant.

Q. How old are you?

A. Thirty-eight years.

Q. Where were you born?

A. In the State of New York.

Q. How are you employed now?

A. I am fireman on the Neafie.

Q. Were you fireman on the Neafie at the time of the collision with the Juniata?

A. I was.

Q. When did the Neafie leave that evening to go down the river?

A. She left Jackson Square about five o'clock, with the barge that was laying along side of the Juinata.

Q. Did she tow that barge down the river?

A. Yes, sir.

Q. On which side was the barge lashed?

A. On the port side. The barge stuck out about twenty-five forward of the bow of the tug-boat, and the stern of the tug stuck out about eight feet aft of the flat-boat.

64 Q. How far had you proceeded down the river when you met the accident?

A. I am not accustomed to distances on the river. They say it was about thirty miles.

Q. Where was the tug-boat when the collision occurred?

A. The tug-boat was close into the bank; I could see the bank by standing on the tug-boat's rail. At the time of the collision I was standing at the engine-room door, with my head at the jamb of the door. The engineer stuck out his head and said, "Jack, there is a light;" his name is West. He says, "There is a light; a steamer, I believe." Says he, "She will be into us." Says I, "No, she will not," because I see the red light, and by seeing that, supposed she would go clear. I could not see the green, and I felt kind of easy. Says I, "No, she will go clear, because I see her red light." The next moment West says, "She is coming into us." Then I could see the bow and discern her hull coming out of the fog; it was thick fog where she was. Says he, "She is going to strike us about our boilers." At just this time the bell rang to
65 slow the engine down, three times to slow the engine down; and directly as the engine was slowed it rung once again and the engine stopped. The engineer stopped her, and as he stopped her the steamship struck the bow of the boat. There is a globe lamp hanging and it put that out. It put all the lights out. I was still standing, holding on to the door. I had the notion she would strike the boiler, and my intention was, if she did, I was going to go overboard aft as the safest place. That was my intention. When she came alongside you could see a kind of streak of light, or a streak of fire along where

she struck the Neafie. I suppose by stopping the engine it kept the Neafie back far enough, and she struck her in the head. If the Neafie's engine had been working at the time she struck us, she would strike us further aft, where the boiler was, and the chance was she would sink her or blow her up.

Q. Who was on duty at the time?

A. My duty was firing. I was just coming up from the fire-room.

66 When you put in a fire you always come up on deck. I was talking to the engineer. The cook was up and the deck-hand was up. They were all up with the exception of the fireman belonging to the boat. I was an extra fireman. The other fireman had turned in and I was on watch.

Q. Who was at the wheel?

A. Captain Hopper.

Q. What became of the flat-boat that was lashed on the port side?

A. The first I know she was adrift and we were run into the bank. I did not see the Juniata strike the flat-boat, but the flat-boat was adrift when I saw her, and the tug run into bank.

Q. Did that flat-boat have a watchman?

A. Yes, sir; a man went down for that purpose and took charge and care of her.

Q. What lights did you have on deck?

A. A green light and a red light; green light astarboard and a red light on the port and two lights on the smoke-stack.

Q. How were they burning?

67 A. They were in good order a little before. At the time of the collision I did not see them, but I saw them fifteen minutes before. You could see them standing out forward on the bow. I was out there.

Q. What effect did the collision have on the flat-boat?

A. The flat-boat sunk through it.

Q. How did she strike the flat-boat?

A. I did not see how she struck the flat-boat. The starboard bow of the flat, the corner, was all torn off and jammed in.

Q. What effect did it have on the position of your boat which had been heading down?

A. It careened her over.

Q. How did it turn her?

A. In towards the shore.

Q. What did you all do?

A. The first thing I did was to go light some lamps.

Q. Where did you first see Mr. Pursglove?

A. The first I saw of him was up at Canal street after we came to town, after the collision. Before that I saw him on the boat going down.

Q. You did not see him when he fell down or was thrown down?

68 A. I did not.

Q. How fast was the Neafie going at the time the collision occurred?

A. She could not be going over three miles or three miles and a half an hour. She was going slow. If she was going full speed she could not have gone over five, with a flat, or thereabouts.

Q. About what time of the night was it?

A. About half past ten.

Q. Did the collision jar your boat much?

A. It did.

Q. Whereabouts did you say the chief engineer stood?
A. He was standing right by the throttle of the engine, where we shut off the steam from the engine. You could have one hand on the throttle and the other on the door where he was standing at this time. He did not have his hand on it at the first remark he made.
Q. What is the distance from the house on deck to the bulwarks of the boat?
A. About two feet and a half, I should judge, from the side
69 of the house to the bulwarks.
Q. Where was Williams, the cook, at this time?
A. He was sitting in the galley-door. Sitting in the kitchin-door.
Q. Was he sitting on the starboard side?
A. Yes, sir.
Q. Towards where the Juniata run in?
A. Yes, sir.
Q. Did the Juniata hail you?
A. All they said when they struck was, as they were going by, "Where the hell are you fellows going?" That was the only thing I heard on the steamship.
Q. Did she go fast?
A. She was going fast.
Q. Full speed?
A. I should judge so by the way she passed. I could not see her wheel turn the water as she passed by us, we were so low.
Q. Did she blow her whistle before she came to you?
A. I did not hear any.
Q. Do you know whether the Juniata changed her course from
70 the course she was coming when she struck you?
A. I do not know whether she did or not.
Q. Did you ever see the flat-boat after that night?
A. Yes, sir.
Q. Was it a total wreck?
A. She was down in the water a good ways.
Q. Was the cement submerged under water?
A. Yes, sir.
Q. Do you know how much cement she had on board?
A. I do not.
Q. Did you see anybody on the Juniata?
A. No, I did not. We were so low under them, I could not see anybody on her deck.
Q. Whereabouts on the Juniata did this man seem to be standing that hallowed?
A. About abreast of the pilot-house of the Juniata at the forward part of the ship.
Q. Did the Juniata have any white light?
A. Yes, sir.
Q. She did not open her starboard light at all?
71 A. No.

Cross-examined:

Q. How long have you been on the Neafie?
A. I have been on her steady since the 20th of last month.
Q. How long before Mr. Pursglove was injured?
A. I do not recollect the day, but about a month, I should judge; close on to that.
Q. What was she engaged in?

A. As a job-boat.
Q. What was she getting for towing this boat to the barracks?
A. I do not know.
Q. How long would it take you to make the trip?
A. I should judge about sixteen hours.
Q. To go there and to come back?
A. Yes, sir.
Q. To the forts?
A. Yes, sir; probably more; I do not know exactly.
Q. Does she burn coal altogether?
A. Yes, sir.
Q. How much coal does she burn in running twenty-four hours?
A. I do not know.
72 Q. You fire her?
A. Yes, sir; but I do not know the quantity she uses.
Q. Cannot you give any idea how much she burns?
A. I should judge, in the twenty-four hours, about forty barrels, as near as I could judge.
Q. How many hands did she have on board?
A. Two firemen, deck-hand, engineer, cook, watchman, pilot, and Mr. Pursglove.
Q. What wages did you get as fireman?
A. Forty-five dollars a month.
Q. Did the other fireman get the same?
A. Yes, sir.
Q. What did the pilot get?
A. I do not know.
Q. State the wages of the other employees, if you know.
A. The engineer, a hundred and twenty dollars a month, I believe; the deck-hand, thirty-five dollars a month; the firemen, forty-five dollars a month. What the cook gets and what the captain gets I do not know.
73 Q. Did you do anything but jobbing?
A. Towing; that is all.
Q. How many jobs of towing did she get a day?
A. Sometimes five or six; sometimes one or two; and sometimes none, probably.
Q. What was the average; how much would she average one day with another?
A. About five jobs—four or five.
Q. Then she must get ten or twelve some days?
A. Yes, sir; and some days none.
Q. But what would she get every day, taking an average?
A. In good business times, five jobs on an average.
Q. Towing in the port—moving from one part of the harbor to another?
A. Yes, sir.
Q. What is the general charge for moving a vessel from one part of the harbor to another?
A. I do not know.
Q. Ten dollars or twenty dollars?
A. Ten dollars or twenty dollars—according to the distance, I suppose, they charge
74 Q. Do you think she got as many as five jobs one day with another?
A. I think so.

Q. Then she must have got a great deal more than five some days?
A. Yes, sir; some days she got more than five.
Q. What was the most you ever knew her to get a day?
A. I have been on her a very short time. She got five or six jobs sometimes since I have been on her. Business, they tell me, is very dull now.
Q. How far were you from the pilot house; you say were at the door looking out?
A. I was about thirty feet aft of it.
Q. Was the place where you fire up below the main deck?
A. Yes, sir.
Q. Do they keep regular books on the boat?
A. I do not know. I had no chance to find out.
Q. How near was the Juniata to you before you knew there was a boat anywhere in the region?
A. When I first made her out, about twenty feet off.
75 Q. You heard no signal at all from her?
A. No.
Q. Did the scow that was lashed on the port side of the Neafie stand exactly parallel with the Neafie?
A. Yes, sir.
Q. Did the Juniata strike the Neafie or the scow first?
A. She struck the Neafie first.
Q. Did she break any part of the Neafie?
A. The railing where the deck is fast to the hull. She jammed that in some.
Q. How far from the bow?
A. About eight feet, I should judge; right on the bluff of the bow where it rounds off—eight feet abaft of the stem.
Q. That is about eight feet from the stem?
A. Yes, sir; I should judge so.
Q. What part of the Juniata came against that?
A. About the bluff of her bow struck there.
Q. What part of the flat was broken?
76 A. The forward part of the starboard bow of the flat-boat.
Q. How far was it driven in?
A. Kind of drove across. The starboard corner of the scow was jammed into the boat itself.
Q. What was the cause of its filling?
A. The cause of its taking in this water.
Q. How long do you suppose it was after the Juniata passed on before the scow sunk?
A. About twenty or twenty-five minutes. They run the boat on shore and found they were not leaking. Then they backed off and got outside the flat-boat and shoved her in on the bank.

Redirect:

Q. What sort of a night for running was this?
A. It was good enough for us. We could see the bank easy. On the other side of the river it seemed to be foggy and thick; the right-hand side, coming down, was thick and foggy.

(Signed) JOHN McVEY.

77 Testimony of JAMES McFADDEN, Jr., examined for libellant, says:

I am twenty-five years of age. I live at 518 Crap st., New Orleans.

I was one of the crew of the Neafie at the time of the collision. I am in no employment at the present time.

Q. In what capacity were you engaged on the Neafie on the 10th of February last?

A. As fireman.

Q. Were you on duty at the time of the collision?

A. No.

Q. Where were you?

A. I was on deck at the time of the collision.

Q. When did you first perceive the steamship Juniata?

A. I heard them going around and talking, and I thought there was something up, and I got out and seen the steamship coming for us.

Q. How far was she from you?

A. When I saw her, not over fifty or sixty feet.

Q. How was the Neafie proceeding?

A. Right down the stream.

78 Q. Whereabouts in the river was she?

A. On the left bank, a little below Poverty Point.

Q. How far from the left bank?

A. I should think about a hundred yards.

Q. Do you know how many feet make a yard?

A. Yes, sir; three feet make a yard.

Q. Do you think she was three hundred feet from the left bank?

A. Yes, sir.

Q. Where was the flat-boat?

A. On the port side, lashed to us.

Q. Could you see the shore on your port side?

A. Yes, sir.

Q. How came you to see the shore?

A. As soon as the collision happened, I was on the starboard side, and I thought the boat was going to sink, and I went through the cabin to the port side to see how far I would have to swim if she did sink.

Q. Where did the Juniata strike you?

A. Forward, outside.

79 Q. Did she jar the boat?

A. Yes, sir.

Q. How much?

A. If you did not have good footing it would knock you down.

Q. How did you steady yourself?

A. I caught hold of the house.

Q. You mean the cabin on deck?

A. Yes, sir.

Q. Who were on duty on the tug?

A. My partner, the engineer, Mr. West, Captain Hopper, and one deck-hand.

Q. What lights did you have out?

A. A red light on the port side and a green light on the starboard side, and either one or two lights at the stack. I am not sure. I did not take much notice.

Q. At what speed did the Juniata appear to be going?

A. She seemed to me to be going as fast as she could.

Q. Was your tug stopped or slowed?

80 A. She was going under a slow bell until the Juniata struck her, when she stopped.

Q. Was the gong sounded?

A. Yes, sir.

Q. What was sounded?
A. Three taps of the gong; that means to go slow.
Q. That was before she struck?
A. Yes, sir.
Q. Suppose she had not been slowed in that way, what do you think would have been the result?
A. She would have struck us more midship or around the stern, somewhere.
Q. Did you see Sam. Williams, the cook?
A. I saw him on deck.
Q. What did you see him doing there?
A. He was not doing anything; he was trying to get on the flat-boat, I believe. I did not take much notice of him, I was looking out for myself.
Q. Did you see him in the cook's galley?
A. I saw him there before the collision, about a quarter of an hour. There was a violin aboard the boat, and he was sitting playing
81 it.
Q. Could you see the shore plainly on your port side?
A. Yes, sir.
Q. After the collision, did the Juniata stop?
A. No, not that I know; I saw her going on.
Q. Could you say at what angle she struck you?
A. We were heading down stream, and she struck us at an angle of thirty-eight, about, degrees.
Q. What effect was produced on the flat-boat?
A. All the forward part of the flat-boat was tore up. The steamship run along the side, scraped the plank off, and knocked a hole in her, an' she commenced sinking.
Q. What position did it knock your boat into?
A. It kind of turned her over.
Q. What did the Neafie do afterwards?
A. Let go the flat and run ashore; did not have far to go—just turned around and headed her in.
82 Q. When you got in, how far was the flat-boat from where you were?
A. She was right astern, within reach of a pole.
Q. Where was Mr. Pursglove, the owner of the tug, that night?
A. I saw Mr. Pursglove on the pilot-house before I turned in. I do not know where he was at the time of the accident.
Q. Where did you see him after the accident?
A. I saw him lying on deck.
Q. Was he hurt?
A. Yes, sir; he was.
Q. What condition was he in; was he insensible?
A. He was.
Q. What did they do with him?
A. Carried him up and put him in his room.
Q. And brought him to town?
A. Yes, sir.
Q. What time of night was this?
A. Between ten and eleven o'clock.
Q. How long had you been going down to the place where the collision occurred, and where did you start from?
83 A. We started from Jackson Square between four & five o'clock,

and it was between ten and eleven o'clock at night at the time of the collision.

Q. Did the steamer Juniata blow any signals?

A. I did not hear her, sir.

Cross-examined:

Q. When you first heard the commotion on the deck, and supposed something was going to happen, where were you at that moment?

A. I was on deck.

Q. Outside?

A. Yes, sir; I had been in my bunk, and when I heard the commotion around the deck I got up to see what was the matter.

Q. How long before the collision had the slow-bell been rung?

A. I have no idea; I was in bed. I do not know what time they rung the slow-bell.

Q. How do you know the slow-bell was rung?

A. Because when I got up she was going slow.

84 Q. How long before the collision happened did you first get up out of the bunk and go out?

A. As soon as I heard the commotion about the deck I got up and went out the starboard door of the cabin and looked, and saw the steamship coming; then I went through the cabin again to the port side and hung on to the house, for I knew she was going to jar the boat.

Q. Was there any hollowing?

A. There was some hollowing around the deck; not much.

Q. Nobody was hollowing from the other vessel?

A. I did not hear any.

Q. When you went out on the starboard side, could you see the shore off on the right bank?

A. No.

Q. What was the reason?

A. It was dark and I could not see.

Q. Did the tug blow any whistle?

A. No.

Q. Gave no signal at all?

A. Not that I know of.

Q. Did you give any signal that night that you heard?

85 A. Yes; one for the Bradish Johnson, or whatever coast-boat packet it was.

Q. Where did you pass the Bradish Johnson?

A. I have no idea.

Q. Where was the Bradish Johnson at the of the collision?

A. She was below us.

Q. You were sleeping at the time you first heard the commotion, and was awakened by the commotion?

A. I was not asleep, but kind of dosing off when I heard the commotion.

Q. How long after the collision before the flat sunk?

A. About a quarter of an hour.

Q. Did the collision turn the flat-boat around?

A. Yes; shoved us around some.

Q. Did the Juniata change her course?

A. She was coming right straight for us—on to us, and I suppose she must have seen us and turned off a little.

Q. Which way did she turn?

A. She turned off to the port.

Q. Turned off to the port?

A. Yes, sir.

86 Q. Turned her bow to the port?

A. Yes, sir; turned her bow off.

Q. You do not mean that, do you?

A. When she was coming on you ask me which way did she come.

Q. She was coming right in and turned off to port?

A. Yes, sir; and hit us kind of slanting on the bow. If she had not turned off a little, she would have hit us in the middle and gone right through us.

Question by counsel for plaintiff:

Q. You mean ported her helm?

Yes, sir.

Cross-examination resumed:

Q. When you port your helm you bear to the right. Do you mean she went to port or ported her helm?

A. I mean she ported her helm.

Q. Was that before or after she struck you that she ported her helm?

A. She ported her helm just a little before she struck us.

Q. Did you notice how the flat was broken; did you observe particularly?

87 A. No; but I know she was all broke up forward, the part that was forward of our boat.

Q. Did you notice, was the head crushed in or shoved in; knocked her head in, or how?

A. The planks were all knocked every which way.

Q. Did you go on shore after you got to the shore?

A. No; we put the boat ashore.

Q. Did you see anybody there on shore?

A. No.

Q. Nobody came on board at the shore?

A. No; no one did.

Q. Did you leave that place before day-light?

A. It was breaking day when we left.

Q. Was anybody there while you were at that shore at all?

A. No.

Q. Did you see any lights on the Juniata?

A. No; I did not take notice of any.

Q. How did you see her?

A. I saw her coming as soon as I came out of the cabin.

88 Q. You saw the vessel itself?

A. Yes, sir.

Q. How far was she from you?

A. About fifty or sixty feet when I first came out on deck.

Q. Was there any fog that night?

A. A little; not much.

Q. How did the fog lay?

A. I do not know.

Q. You mean by little, thin?

A. Yes, sir; thin.

Q. You could almost see through it?

A. Yes, sir.

Q. Was it not high?

A. No; not very high.

Q. Was it a suitable night for running?

A. Yes, sir.
Q. What wages were you getting on that vessel?
A. Forty-five dollars a month.
Q. How much coal did she burn a month?
A. I do not know.
Q. How many barrels did you generally get?
A. We took in a hundred and fifty or two hundred barrels every time we coaled.
Q. How often did you coal?
A. Two or three times a month.
89 Q. Not more than two or three times a month?
A. That is according to what they took in. If they took in a a hundred and fifty or two hundred barrels, they would coal up two or three times a month. If they took in seventy or eighty barrels we would coal up every week.
Q. Who was standing out in front on the lookout—was there anybody—on your boat?
A. I do not know. The deck-hand was looking out. He is supposed to be on watch.
Q. But you say you do not know of anybody?
A. The deck-hand.
Q. Did you see him there?
A. I did not.
Q. Then how do you know he was there?
A. Because he is supposed to be there.
Q. Did you see anybody on the flat?
A. The watchman was on the flat.
Q. Where was he standing?
A. He was standing aboard the flat, about midships.
90 Q. Was there any alarm given on your boat that a vessel was approaching, or anything done to warn them off?
A. I do not know. I did not hear any. They could have seen us.
Q. You blew no whistle at all?
A. No.
Q. How far could the Juniata have been seen that night?
A. I do not know how far she could be seen—maybe a hundred or a hundred and fifty yards.
Q. Could she have been seen no further?
A. I do not know whether she could or not. They could see us further than we could see them, because the Juniata was high out of the water.

Redirect:

Q. How long is it since you have left the tug?
A. I left on the 28th of March.
Q. Were both vessels going down the river?
A. Yes, sir.
Q. I do not understand what you said about three taps of the gong.
91 A. Three taps of the gong is to slow her down.
Q. Did you say you heard three taps of the gong?
A. No; but she was going slow.
Q. Then you mean to say that you inferred they were rung because the boat was slowed?
A. Yes, sir.
Q. Who was the engineer?

A. West Cassell.
Q. What was the fireman's name?
A. I do not know his name. All the name I know for him is Jack.
(Signed) JAMES McFADDEN.
APRIL 8th, 1872.

HENRY C. HOPPER recalled for libellant:

Witness wishes to correct a statement made by him while on the witness-stand yesterday and says:

I said yesterday that I had received pay for over two thousand dollars a month earnings for five months. It should have been for three months instead of for five months. I also wish to say in reference to the map of the river which I produced last night, is drawn from
92 memory, but the courses are correct, and the points of the compass are correct, for the reaches and the positions are as near correct as I can make them.

(Map marked "B," and offered in evidence to explain the witnesses testimony.)

Witness further says: That chart is not intended to be scientifically correct, but to be sufficiently correct to explain my testimony.
(Signed) H. C. HOPPER.
APRIL 6TH, 1872.

Testimony of WEST CASSELL, sworn and examined for libellants, says:

I am the engineer of the Neafie. I am a licensed engineer. (Witness produces his license, which is offered in evidence and marked "C.")

Q. How long have you been an engineer?
A. Since 1849, off and on, as assistant engineer on sea-going steamers. I was an assistant engineer some years before that.
Q. Were you the engineer on board the Neafie on the night of the 10th of February, when the steamship Juniata ran into her?
A. Yes, sir.
93 Q. State what happened that night, so far as you know.
A. The first that I knew anything about the steamship was that I happened to see the light. I was standing in the engine-room, and I walked over to look out of the door of the starboard side. I could not see anything on account of the fog on that side of the river. I staid there for a few moments, then I stepped out on deck, and the fireman was there, and I happened to look, and I saw a light breaking through the fog. I said to the fireman, "There is a steamship." His name is John McVey, (Jack.) He says, "No." Then we see the red light. He said, "She is not coming towards us." The next moment he says, "I believe she is." I started into the *the* engine-room and went over to the other side, where the working-gear is, and stood by the gear, that in case the bells rung I would be handy. The bells did ring to slow her, and I had her slowed down—the throttle-valve in the left hand and the cut-off in the right; and then the bell rang to stop. Then I shut the throttle and saw the steamship's bow coming past the bow on the
94 starboard side. That was all I saw. I did not see any more, as I was in the engine-room.
Q. When she struck you did it jar your tug?
A. Yes, sir; and knocked our lights out in the engine-room. I was in total darkness. I got hold of the halyards, and pulled the safety-valve up, and haloo'd to some one to light the lamps, and Jack went down in the fire-room and lit a lamp—he had to open the fire-doors—and

he came up to the engine-room with the lamp. Then I told him to go back below and see if the boat was making any water. He went right back and came and told me she was not. The bell rung to go ahead again. I gave her a few turns and she fetched up in the mud of the bank. I looked out of the door after she was ashore, and I saw the flat-boat right under our stern. I looked around at the port side. I could look out from where I stood, and I saw the flat-boat under our stern.

We backed off again and shoved the flat-boat in on the bank. I
95 did not see the steamship no more.

Q. Was Mr. Pursglove, the owner of the Neafie, on board?

A. Yes, sir.

Q. Was he hurt that night?

A. Yes, sir.

Q. Which side did the Juniata strike you?

A. On the starboard side—on the starboard bow.

Q. Which side was the flat on?

A. On the port side.

Q. In what position was she lashed?

A. She was lashed alongside, with her bow a little ahead of our bow.

Q. What damage was done the flat?

A. I could not tell, as we left there again that night. She was a covered boat. I see she was all mashed in forward. I took a look at her after shoving her up.

Q. Had you a full crew on board the Neafie?

A. Yes, sir; what we generally carry.

Q. What did the crew consist of?

A. Captain Hopper, the engineer, (myself,) two firemen, deck-
96 hand, and cook, Williams.

Q. Who was on duty?

A. In the engine-room I was on duty.

Q. And the fireman?

A. Jack was on duty at the time.

Q. Who was at the wheel?

A. Captain Hopper was at the wheel.

Q. Did the Juniata blow any warning to you?

A. I did not hear any at all.

Cross-examined:

Q. Did you see the flat after it was struck?

A. Yes, sir, I did.

Q. Did you notice whether the end of her was mashed inwards or knocked off?

A. All I saw was the roof was mashed off. It was tumbled in.

Q. Driven back into it?

A. Seemed as if the whole side was knock'd in and the deck fallen down. The forward end was knocked in.

Q. You had a bell rung to slow. How long was it after this bell
97 was rung to slow before the order to stop was given?

A. It was not long; a very few moments. I got her slowed down, and had about time to have her slowed down.

Q. Did you have her headway stopped any before the collision?

A. She must have lost some of her headway.

Q. Not much, though, as the time was so short.

A. She must have checked some, though, by being slowed.

Q. Is the engine-room on the main deck?

A. Yes, sir.

Q. How long do you suppose it was after the collision before you got to the shore?

A. After the collision we went ahead on the boat, and I only made a few turns ahead before the boat was ashore. Then we backed off again and put the flat-boat ashore.

Q. What part of the river did the collision occur?

A. Just below Poverty Point.

Q. How far below Poverty Point?

A. I suppose about a mile, or a little more, I should judge.

98 Q. Did you notice the Juniata after the collision?

A. I did not see her after the collision.

Q. How far could any one see her that night after the collision?

A. I do not know; I was in the engine-room after that until after we got the flat ashore. I did not have no time to look out after that.

Redirect:

Q. Was this flat-boat lashed so that the bow of the flat-boat was forward of the bow of the tug?

A. Yes, sir; as well as I could tell. I never took much notice, but I know she was a little ahead of her.

Q. Was that portion of the flat-boat that was jammed in forward of the bow of the tug-boat?

A. I do not know whether it was all forward or not.

Q. Was any of it?

A. Some of it was forward of the bow of the boat.

Q. I understand you to say that the damage to the scow that

99 was apparent to you was the roof had fallen in?

A. Like as if the side was stove in, and that left the roof dropped down. It was dark, and I did take particular notice of it.

Q. What is the distance between the pilot-house and the bulwarks of that tug?

A. About three feet at the pilot-house. Midships she is a little wider. The house is straight, so there is a little more space midships. But where the pilot-house is I think it is about three feet.

Q. Do you know about the height of the pilot-house above the deck?

A. Above the main deck it is pretty near twelve feet, I think.

Q. Have you measured it recently?

A. I put a pole up there, and I measured the pole; it is a little short of twelve feet, but not a great deal.

(Signed) WEST CASSELL.

APRIL 6TH, 1872.

Testimony of SAMUEL WILLIAMS, sworn & examined for libellant:

Q. How old are you, and what is your occupation?

100 A. I am forty-five years old, and I am cook on the tug-boat Neafie.

Q. Were you on the Neafie when this collision occurred?

A. Yes, sir.

Q. What voyage was the Neafie on on the 10th of February?

A. We were going down the river, on the right-hand bank, keeping on our way.

Q. Which bank, facing down the river, do you call the right hand? [Witness corrects himself, and says it was on the left bank going down,] and the Juniata run into us below Poverty Point, as near as I can tell.

Q. What time of the evening was it?

A. It was about ten or eleven o'clock, as near as I could guess.

Q. What was you doing at that time?

A. I was sitting in the galley playing on the violin, & was sitting right in the door.

Q. On what side of the boat was you sitting?

A. On the starboard side. My galley is on the starboard side. When I see the ship I could not see nothing but the mast-head light. I could not see the ship at all; about twenty
101 feet from us, coming full speed. I was sitting with my feet on the sill. I jumped out and stood between the galley and the engine-room. I see then the ship was pointed right midships for the galley. Then she sheered right for the boiler. Says I, she is going through the boiler, and overboard I am going; because if she struck the boiler the way she was coming, full speed, she would have gone right through us. I stepped up to the engine-room, and seeing she must strike us just above the cavil, just above the pilot-house. The cavil is where we make the lines fast. You can call it the bits. As soon as I stopped there she struck the tug and the tug listed over, and said I, "Now the tug is going to turn over." I then goes aft. The Juniata had not rung no stopping-bells or slowed down, but struck us. Says I, "She will take the bow off the tug and I will go on the flat-boat;" and I went on the guards with my violin in my hand. She struck the tug and the tug slewed and then she struck the flat-boat and
102 took the whole corner right out of the flat-boat. I fell right in the wreck, in the stern, right down into the flat-boat. The water was rushing like a mill-dam in the flat-boat, and I jumped on board the tug again, and I said to the captain, "The flat-boat is sinking; better let it go." I thought it would turn the tug over with that cement in it. I let loose the head-lines myself. The captain said, "Cast off." Then the tug run inshore and the flat-boat was right astern of us. Said I, "Here is the flat-boat right astern." I had no boat-hook or anything to catch hold of the flat-boat with. Then the captain backed the tug off and got around outside about midship of the flat, and shoved her right in on the shore and got her in. She was sunk. The Juniata never turned back nor blew no whistle or anything to assist us.

Q. Did she hail you?

A. No; she did not hail us. When she came into us, about twenty feet of us, you could not see the ship at all for the fog, but I could see a little light abaft further. The Juniata came right in for the left
103 bank. It seems she was coming right on this bank, and, if she had not struck the tug, would have gone high and dry ashore herself.

Q. Did they sing out?

A. A man sung out, when they right on top of us, "Where the hell you fellows going?"

Q. Did you see the man that sung out?

A. Yes, sir. He was standing on the forecastle, leaning over the rails. He was the man I would take to be the man fell aboard of our tug.

Q. When the ship struck you, did you see a man fall?

A. Yes, sir.

Q. Where did he seem to fall from?

A. Fell right against the cat-head of the Juniata and fell right back on the deck of the tug.

Q. Did you know that George Pursglove, the owner of the tug, was on board the tug?

A. Yes, sir; I knew the owner was on board the tug.

Q. Did you find out afterwards that he was the man that fell?

A. I found out afterwards that he was the man that fell. After
104 I came out from the flat-boat I took the lamp and went down forward to see if the tug was making water where the ship had struck her. I found the tug was not making water. I came out and set the lamp down, and helped Johnie to make the line fast on her, shoving the flat-boat in. Then we went aft. Said I, "Johnie, who is that down there?" Said he, "A man from the ship." I raised up his head. Says I, "No; it is Mr. Pursglove."

Q. What was the position Mr. Pursglove was in when you found him?

A. Like a man that had fallen head foremost. It seemed as if his head was broke. He was laying doubled up, when I raised his head and looked in his face.

Q. What part of the deck did you find him in?

A. He was lying right at the cavil, where we make fast.

Q. Is that near the pilot-house?

A. Right at the steps, within about two inches of the steps, doubled up all in a heap. When the ship struck the tug, she struck right there, and I thought it was the man that fell from the deck of the
105 ship, but it must have been Mr. Pursglove.

Q. What did you do with him then?

A. I called out Johnie and the captain and said, "Here is Mr. Pursglove lying here." They took him up, put him in the pilot-house and put him in bed.

Q. Who is Johnie?

A. A young fellow was on board there; a deck-hand.

Q. How many persons were on board the tug?

A. West & Jack and I and Mr. Pursglove and the captain.

Q. Was there anybody else?

A. Jimmie; but Jimmie was turned in.

Q. What lights did your tug have?

A. She had two white lights on the smoke-stack and a red and blue light.

Q. Was it a blue or a green light?

A. It was red on the starboard and green on the port, and two white lights. The Juniata seemed she came right across the river and she did not stop at all after she run into us. They did not give no
106 signals nor anything. The whole broadside of the ship from the engine-room was there and she did not ring any engine-bell or anything. She went full speed. They must have seen the bank then, for she sheered right off across the river again and did not give no signal.

Q. Was the tug going slow or fast?

A. The tug was under one bell—slow.

Q. What did the tug do when the steamer came along?

A. Stopped. The captain rung one bell and stopped her, and that is what saved us.

Q. Who was at the wheel?

A. The captain.

Q. On which side was the flat-boat lashed?

A. The flat-boat was on the port side.

Q. Was there a watchman for that flat-boat?

A. Yes, sir; there was a watchman for the flat. He was aboard the flat. He had just come around and got a cup of coffee and went aboard the flat and told me, "I am going to pump her out; we will be
107 down pretty soon," and after a few minutes, when he got his coffee,

he was aft the boiler, and said he, "Here is a ship coming right into us."

Q. You say you were running on the left bank; were you near the bank?

A. Yes, sir; I could see the shore by glimpses. You could see nothing out in the river; and those that were aboard the ship, I do not suppose they could see anything in the river. I could not see the side of the ship until she got as close as that door there, [about fifteen feet.] When I first saw her she was no more than twenty-five or thirty feet away. You could just see the mast-head light. I was sitting in the galley-door and could hear the ripple of the water, and then she was right on top us. We were going down the river, and she was coming right into us, and after she seen us she sheered and struck the tug a glancing blow, and then I jumped out on the rail. She bursted all the end off the flat-boat and threw me right down among the cement, and when I saw the water rushing in on the flat I jumped back on board the tug
108 and told the captain the flat was sinking as fast as it could, the water was coming in like a mill-dam. He said, "Cast off," and I run forward and let go the head-line and tow-line, and cast them off myself. Then we got ashore, and the flat-boat was right at the stern of us, and if we had a spike-pole we could have caught hold of her then. Then we backed off and shoved the flat-boat right in.

Cross-examined:

Q. What kind of a night was it?

A. It was foggy; very foggy.

Q. Did the fog extend all over the river?

A. Yes, sir; out into the river there was a heavy fog. Close into the shore you could see glimpses on shore, but you could see nothing out in the river more than the ship's head-light.

Q. You say you were sitting on what part of the vessel?

A. I was sitting in the galley.

Q. Which side of the cook-house were you sitting on?

A. On the starboard side of the cook-house.

109 Q. Was you looking out on the starboard side?

A. Yes, sir.

Q. You were sitting nearly out of the door?

A. Yes, sir; with my feet on the deck.

Q. Whereabouts is that door in the cook-house—about midway of the cook-house? How much was there forward of you of the cook-house, and how much abaft of you?

A. The door is right in the centre of the cook-house, on the starboard side, and I was sitting right in the door.

Q. You were looking out from the cook-house out into the river?

A. Yes, sir.

Q. Could you see the shore occasionally, as you went along, where you were sitting?

A. No; I could not see the shore then; the shore was on the left-hand bank.

Q. Did you not see the shore while you were sitting there?

A. No; I did not see the shore while I was sitting there.

Q. You were sitting there when you discovered the steamer?

110 A. Yes, sir.

Q. When you discovered her, how far was she from you?

A. About twenty or thirty feet of us. Then she was pointing right midship of us.

Q. What did you do then; remain there, or jump up, or what?

A. I got up, with the violin in my hand. The axe was near me, for I had been splitting kindling-wood, and I took the axe and got up and seen her as close as the door there.

Q. How long after this collision was it you saw the shore—how long after they came together you *you* saw the shore?

A. About five minutes.

Q. Which way did you look to discover the shore?

A. I looked on the right-hand bank.

Q. Which do you mean by the right-hand bank; as you were going down the river which hand was it on? Facing down the river, which bank did you look to?

A. On the left bank as I went down the river.

Q. How long after the collision was it you saw it?

111 A. About five minutes after the ship struck us, I saw the bank. And the ship after she struck the tug hauled right square off in the middle of the river. Just struck the tug and flat and went off.

Q. How did the ship come into you—at right angles, slanting, or how?

A. She struck us a kind of a slanting blow; when I first saw her she was coming midships at a right angle.

Q. Then how did she strike you?

A. She sheered then for the boiler.

Q. She sheered for the boiler, and where did she strike you?

A. Just above the cavil.

Q. How far is the cavil from the stem?

A. I suppose about five or six feet.

Q. How far are the bits from the bow of the tug?

A. The bits are about a foot or two from the pilot-house.

Q. How far is that from the bow of the tug?

A. I suppose about eight or nine feet. The bits and the cavil are different.

112 Q. By what lines was the scow fastened to the Neafie?

A. We had three lines out, a head-line, a stern-line, and one abreast.

Q. When the collision occurred, which one of these lines gave way, or did any of them give way?

A. None of them gave way, but they all slacked. They were as tight as a fiddle-string before.

Q. It did not break any of them?

A. No; it did not break any of them.

Q. Which way did the Neafie cant over when she was hit—to the port or to the starboard side?

A. Over to the starboard side. The starboard side of the Neafie went down. The ship struck her just above the cavil and she listed. I see she cleared the boiler and I knew she would strike her forward, and said I, "She is going to take the whole bow off her."

Q. And you jumped on the flat?

A. Yes, sir.

Q. How long did you remain on the flat?

A. I remained on the flat about five or ten minutes—until after

113 the Juniata passed.

Q. Was the Neafie moving during that time?

A. Just drifting—floating.

Q. Did you cut the flat-boat loose from the Neafie at all?

A. We let go the flat.

Q. Al*l*together?

A. Altogether; yes, sir.

Q. How long after the collision did you let go the flat altogether?

A. I reckon about five minutes or so, as near as I could guess, after we let go the flat. It was at the stern of us.

Q. You let go and she remained astern of you?

A. Yes, sir.

Q. Floated along aft of you?

A. The captain run the tug ashore, and said I, "Here is the flat right astern of you." Then if I had a pike-pole I could have hooked on to the flat and hauled her in.

Q. Did you have to go back on the Neafie to get the stern-line loose?

A. Yes, sir. I jumped aboard the Neafie when I seen the flat was sinking, and I said to the captain, "That boat is sinking." I
114 throwed the lines of' the flat-boat to keep her from getting into the wheel. One of the tow-lines we let go.

Q. At the time of the collision, how far do you suppose you were from the bank of the river?

A. As near as I can tell, I do not think we were over two hundred yards, as near as I can come at it, if we were that. We were very close inshore; we were pretty close inshore; because, after she struck us, and we let go the flat-boat right there, and when we backed off from the shore there was the flat-boat right at the stern of us.

Q. Which bow of the flat-boat was struck?

A. The forward end.

Q. Was it pushed in or out?

A. She took the whole end right out.

Q. Was it taken off or mashed in?

A. Taken off. She took the whole bow right off.

Q. And it was not mashed in?

A. She struck the tug, and the tug slewed; and she struck the flat-boat and took the end right off of her.

115 Q. The tug took the end of' the flat-boat?

A. No; the steamship took the end right off the flat-boat; just knocked the whole head off the flat-boat, after striking *after striking* the tug.

Q. Did you see Jack [McVey] there that night?

A. Yes, sir.

Q. Was he moving around very briskly?

A. Yes; we were all trying to caulk the flat-boat.

Q. Was he trying to caulk the flat-boat, too?

A. Yes, sir; he was there, and the watchman of the flat-boat. I got the oakum and I got the blankets myself, and stuffed the blankets in, and found it was of no use, as the whole end was out of the flat-boat.

Q. Did you hear whistles that night, about the time of the collision?

A. Yes, sir; the Bradish Johnson blew her whistle. She was at the bank just before the Juniata came into us. One steamer passed
116 down and blew to us, and we blew a whistle to her.

Q. How long before the Juniata run into you did you blow that whistle?

A. About an hour and a half or two hours, as near as I could tell.

Q. How was the Bradish Johnson from you when she blew her whistle?

A. She was just below us, and she laid up.

Q. What did she blow her whistle for?

A. She passed us, and then laid up.

Q. She blew her whistle and passed you, and then laid up?

A. Yes, sir.
Q. How far above you did she lie up?
A. She went across the river.
Q. On which side going down did she lie up?
A. On the left hand going down, and there she lay.
Q. After she passed you she went on the other side of the river and laid up?
A. Yes, sir.
Q. How close did she come to you?
117 A. She did not come close to us at all. She was blowing for her landing.
Q. Which side of you did she pass?
A. She passed on the left-hand of us.
Q. She gave a signal and you answered, or you gave a signal and she answered; which was it?
A. We gave a signal and she answered it.
Q. Did you see the Juni'ta about that time?
A. No.
Q. How long afterwards was it before the Juniata came into you?
A. About a quarter of an hour or an hour, as near as I could tell. I give my evidence as near as I can explain. I did not take any notice or any time.
Q. What other steamer did you see that night besides the Bradish Johnson and the Juniata?
A. There was one steamer passed along by us and we blew a whistle, and there was another one that blew a whistle to us.
118 Q. What other one was that?
A. A propeller; they were both propellers.
Q. What vessel was it?
A. I believe one was an English vessel, and one was the Star Line; I do not know whether the Cromwell or not. But there were two that went out, and the Juniata was the last.
Q. You know where Poverty Point is?
A. Yes, sir.
Q. How far from this point was it that the collision occurred?
A. Just a little below the point.
Q. How far below the point do you suppose it was?
A. I could not exactly explain how far below it was; I do not suppose we were over a mile or two miles. I am not acquainted to know.
Q. At the same side as the point?
A. Yes, sir.
Q. Did nobody on board of your vessel give any alarm about the Juniata coming—did you hear no one say anything about her approaching?
A. Yes, sir; Jack. He was standing, and he says then to Mr.
119 West, "Here comes a steamship coming right into us."
Q. How far was she then?
A. I do not suppose she was above twenty feet.
Q. That was the first you heard of her approach?
A. Yes, sir; and then I could hear the water, but could not see nothing. I was looking through the fog, and with my head up; I could see the mast-head light. Then she was right on the top of us. A man was standing on the deck, and he hollo'ed out, "Where the hell are you fellows going?" And where were they going? They did not know where they were. If she had not struck the tug, she would have gone high and dry ashore. All the tugs in the river would not have pulled her

off if she got ashore there, because she come right for the left-hand bank, and she coming right across the river. If she got on the flat, she would not have got off. They did not know where they were going.

Redirect:

Q. The flat-boat with the cement on sunk?

A. Yes, sir.

120 Q. Did you see it after the night it went ashore?

A. Yes, sir.

Q. How long after?

A. We lay up there for an hour and a half. We lay there until it got so we could see to run to come up.

Q. Was not the flat-boat full of water when you left her?

A. Yes, sir; a total loss.

Q. Was the Bradish Johnson on her trip down the coast?

A. Yes, sir; going down.

Q. Then when you say the Bradish Johnson passed you, do you mean she had passed you before the collision on her way down the river?

A. Yes, sir; she passed us before this collision.

Q. And she was lying how far below you?

A. She was above us.

Q. Was she further down the river then you were when the collision took place; was she further down the river then you were?

A. No; she was above us—she was a little above.

Q. Did the Bradish Johnson have torches out?

A. Yes, sir.

121 Q. Pitch-pine torches?

A. I do not know whether it was pitch pine or not. I could see her after she made her landing.

Q. Was she down the river from where you were or up the river?

A. She was down the river—just made her landing.

Q. I want you to remember well—what do you mean? Was she below or above you?

A. She was above us after the collision, because we were a little below her when the ship struck us. With the bow of the Neafie into the bank, and I standing facing the bank, the Bradish Johnson was on the left-hand side of me, as near as I could say.

Q. Was she nearer to Fort Jackson then you were at the time the collision happened?

A. I believe we were a little nigher the fort than she was.

Q. She was nearer Fort Jackson then you were, or were you nearer then she was?

A. She was a little above us, across the river. I could not measure.

Q. Where were you standing when you saw this man fall?

122 A. I was about two feet from my galley-door when I saw this man fall, and it was Mr. Pursglove.

Q. From where you were sitting, now, do you remember what you call up and down the river?

A. Yes, sir; I am not a talented man, but I will explain, as far as I can.

Q. I want to know whether the Bradish Johnson was down from where you were or was she up?

A. Right across. I could not measure the distance. She had made her landing at the time I went back to the boat, and I could see her torch-lights. Then we were making right for this shore. She had rounded to, and we were drifting along.

Q. Was she down the river from where you were, or was she up the river from you?
A. She was going down.
Q. Was she not at the landing?
A. Yes, sir.
Q. If your tug lay at one place, and she lay at another place, could you tell whether she was down or up from you?
A. I could.
123 Q. Was the Bradish Johnson down from where you were that night or up?
A. She was up. I cannot read or write.
Q. You are a colored man?
A. I am.
(Signed) SAML. WILLIAMS.

APRIL 6TH, 1872.

Testimony of JOHN C. MILLER, sworn and examined for libellant.
Q. Were you on the Neafie the night of her collision w th the Juniata?
A. I was.
Q. How were you employed on the Neafie?
A. I was deck-hand on Neafie temporarily. The child of the deck-hand of the Neafie was drowned, and I went down in his place.
Q. How far below Poverty Point was the Neafie when the collision occurred?
A. To the best of my judgment, about halt or three-quarters of a mile.
Q. Were you on deck at the time that the collision occurred?
A. I was.
Q. How did you happen to come on deck?
A. I was called forward to make a landing. I had been asleep,
124 and the captain sent a fireman to call me to stand by to make a landing.
Q. Was the boat being got ready to make a landing?
A. She was looking for a landing at the time.
Q. Who was steering her?
A. The captain.
Q. Did you see Geo. Pursglove, the libellant, that night?
A. I heard him on the top of the pilot-house talking to the captain.
Q. Did you hear what he said?
A. Yes, sir; I heard him say "to the left."
Q. Where were you standing when you heard what Mr. Pursglove said?
A. I was standing about three or four feet from the bit forward.
Q. When you first went forward to help make the landing did you see the Juniata?
A. I did not.
Q. How long was it before you did see her?
A. Two or three minutes.
125 Q. How did she appear to be coming on?
A. Heading on when I saw her.
Q. How long was it before she struck you?
A. Three or four minutes.
Q. How did she strike you?

A. A glancing lick on our bow, and head on to the barge; not exactly head on, but a glancing lick.

Q. How came she to strike you glancing, as you said she was coming head on a minute or two before?

A. They must have sheered when they saw us. The man on the look-out hallooed to us, "Where in the hell and damnation are you coming to?"

Q. Did she strike a hard blow?

A. Yes, sir; they never stopped the motion of the engines.

Q. Did it knock you off your feet?

A. Yes, sir; to the barge. I was running from the boat to the barge, and it knocked me off my feet to the barge.

Q. Was there anybody on the barge?

A. Were was a watchman on the barge at the time.

Q. Did not he have a light?

A. He did.

126 Q. What lights did you have on the tug?

A. Two bright white lights on the chimney; and a red on the port, and a green on the starboard.

Q. Whose duty was it to trim these lights?

A. Mine.

Q. At the time of the collision, were all these lights burning?

A. They were.

Q. How do you know that?

A. I looked at them as I came forward.

Q. How long had it been since you had trimmed them?

A. About an hour.

Q. Did you trim them all?

A. I trimmed them all.

Q. Did you see Mr. Pursglove when he was knocked down from the pilot-house?

A. I did not see him fall, but I saw him three or four minutes after, when he lay on the deck.

Q. Describe how you found him.

A. With a comforter over his face, lying with his head on his arms.

Q. What was his condition?

A. He was insensible.

Q. Was he bleeding at all?

127 A. Some at the mouth.

Q. On which side of the river was the Neafie when the collision occurred?

A. On the port side; that is, on the left hand going down.

Q. How near the left bank of the river was the Neafie when the collision occurred?

A. To the best of my judgment, about fifty yards.

Q. What did you do with the flat-boat after the collision?

A. We started for the bank with it. We could not get in at first. We grounded. We then let go of it and shoved it in end on.

Q. How long did it take you to get it to shore from where the collision occurred?

A. Two or three minutes—no longer.

Q. Was there any landmark where this collission occurred?

A. There is a tree near to where we landed. I saw it when we came in there and at daylight in the morning when we left.

Cross-examined:

Q. Did you leave that place at daylight?

128 A. Nearly about daylight.
Q. Was it not about two o'clock when you left?
A. No.
Q. Was it light enough to see when you left?
A. I could see plain. It was not day. We lay above there a short time afterwards.
Q. Were you running parallel with the bank at the time of the collision?
A. We were looking for a landing. The alarm-bell had rung for a landing.
Q. How did your vessel lie in regard to the line of the bank?
A. Heading in a little towards the bank.
Q. How much?
A. I could not say.
Q. But nevertheless you were heading in toward the bank?
A. Yes, sir.
Q. And were about fifty yards from it?
A. Yes, sir.
Q. Did the Juniata continue on her course?
A. She did.
Q. Without changing or stopping?
129 A. She never stopped the motion of her engines.
Q. Nor changed her course?
A. Nor changed her course.
Q. Whereabouts was Mr. Pursglove lying when he fell from the pilot-house?
A. On the starboard side; near about the cavil.
Q. How far from the edge of the vessel—from the bulwarks?
A. About eighteen inches or two feet.
Q. Was it forward of the pilot-house?
A. Not forward, but right abreast of the pilot-house.
Q. In front?
A. No, alongside.
Q. Did you go ashore when you landed there?
A. No; I did not.
Q. How near did you get the flat into shore?
A. Shoved it up on some flats—on some mud slanting bank.
Q. How near did you get it up to the main shore?
A. About six or eight feet, as near as I could judge.
130 Q. Did you go on the Neafie up to within six or eight feet?
A. No.
Q. How did you get it up?
A. Shoved it in. The Neafie had the distance of the barge between her.
Q. How long was the barge?
A. That I could not say.
Q. Do you think it was a mile below Poverty Point the collision happened?
A. About half a mile or three-quarters; about that.
Q. Did you see any steamboats about there?
A. There was on the other side shortly afterwards.
Q. How long afterwards?
A. I could not say; maybe half an hour.
Q. No other there?
A. No.
Was there one above you?

A. Yes. That was the one I am speaking of now.
Q. You saw her above you?
A. We heard her.
Q. Was there any below you?
A. No.
Q. Could you have seen one if there had been one below?
131 A. If near enough we might.
Q. You could see her if within half a mile with torches?
A. Yes, sir.
Q. If there had been a coast packet with torches, as usual at landings, could you see it a mile?
A. We could half a mile.
Q. What sort of a night was it?
A. Foggy—hazy.
Q. Was there much fog?
A. There was a good deal of fog?
Q. How near did the Juniata come to you before you saw her?
A. About twenty yards before I saw her.
Q. What did you first see of her?
A. The signal-lights; green and red, and light at the mast-head.
Q. Did anybody come from the shore on your boat that night?
A. Nobody.
Q. Did you see anybody on shore?
A. No.
Q. No house there?
A. None that I could see.

132 Redirect:

Q. Who was with you when you found Mr. Pursglove lying on deck?
A. The cook and fireman. The cook and myself found Mr. Pursglove, and afterwards called the fireman. The cook's name was Sam; he is a colored man. I don't know his other name.
Q. Are you engaged in working on the Neafie now?
A. No; I am not.
Q. What is your business now?
A. I am foreman of a gang of men in the swamp near Brashear City.
Q. How was the flat fastened to the Neafie; on which side, and in what position?
A. On the port side, about twenty or twenty-five feet ahead; made fast by one tow-line, one stern-line, and one head-line.

Recross:

Q. Did the flat-boat remain fastened to the Neafie, or did she break loose?
133 A. We cut her loose. I myself helped to cast her adrift. Then we put our nose against it and shoved it on.
Q. Did you cut every line—let her loose entirely?
A. The stern-line was the only one cut. The concussion was so great that it knocked the forward check-post up, which caused the head line to slip over. As she slid back I threw off the tow-line. She run forward and then backed again with the jar, and I lifted it right off.
Q. How far did she slide back?
A. I could not say.
Q. Did she strike the Neafie first, or the tow?
A. The Neafie was struck first.

128 A. Nearly about daylight.
Q. Was it not about two o'clock when you left?
A. No.
Q. Was it light enough to see when you left?
A. I could see plain. It was not day. We lay above there a short time afterwards.
Q. Were you running parallel with the bank at the time of the collision?
A. We were looking for a landing. The alarm-bell had rung for a landing.
Q. How did your vessel lie in regard to the line of the bank?
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Q. Was it forward of the pilot-house?
A. Not forward, but right abreast of the pilot-house.
Q. In front?
A. No, alongside.
Q. Did you go ashore when you landed there?
A. No; I did not.
Q. How near did you get the flat into shore?
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Q. How near did you get it up to the main shore?
A. About six or eight feet, as near as I could judge.
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A. No.
Q. How did you get it up?
A. Shoved it in. The Neafie had the distance of the barge between her.
Q. How long was the barge?
A. That I could not say.
Q. Do you think it was a mile below Poverty Point the collision happened?
A. About half a mile or three-quarters; about that.
Q. Did you see any steamboats about there?
A. There was on the other side shortly afterwards.
Q. How long afterwards?
A. I could not say; maybe half an hour.
Q. No other there?
A. No.
Was there one above you?

A. Yes. That was the one I am speaking of now.
Q. You saw her above you?
A. We heard her.
Q. Was there any below you?
A. No.
Q. Could you have seen one if there had been one below?
131 A. If near enough we might.
Q. You could see her if within half a mile with torches?
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A. The signal-lights; green and red, and light at the mast-head.
Q. Did anybody come from the shore on your boat that night?
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Q. Did you see anybody on shore?
A. No.
Q. No house there?
A. None that I could see.

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A. No; I am not.
Q. What is your business now?
A. I am foreman of a gang of men in the swamp near Brashear City.
Q. How was the flat fastened to the Neafie; on which side, and in what position?
A. On the port side, about twenty or twenty-five feet ahead; made fast by one tow-line, one stern-line, and one head-line.

Recross:

Q. Did the flat-boat remain fastened to the Neafie, or did she break loose?
133 A. We cut her loose. I myself helped to cast her adrift. Then we put our nose against it and shoved it on.
Q. Did you cut every line—let her loose entirely?
A. The stern-line was the only one cut. The concussion was so great that it knocked the forward check-post up, which caused the head line to slip over. As she slid back I threw off the tow-line. She run forward and then backed again with the jar, and I lifted it right off.
Q. How far did she slide back?
A. I could not say.
Q. Did she strike the Neafie first, or the tow?
A. The Neafie was struck first.

Q. And the boat then rushed along as if going ahead, and then jumped back, and then you loosed it?

A. There was a great strain first on the head-line, and then when she jumped back it slid off.

Q. How was the barge broken?

134 A. The whole head knocked off.

Q. Taken off or knocked off?

A. Sprung so it leaked. You could not stop it. They are made in this style: The bottom cross-timbers sticks out six inches on each side. She must have struck that and pulled it right out.

Q. Did the end come off?

A. Come off so far it could not be stopped. I tried it. It was sprung out about eight inches.

Q. Did it break in any part of the roof?

A. It broke in the roof and mashed the side.

Q. How?

A. The roof fell in the boat. The side was mashed into the boat, and the end was knocked out.

Q. Who else was on the Neafie besides you?

A. Two firemen—I do not know their names; the engineer, "West;" Captain Hopper, Sam, the cook, and Capt. Pursglove.

Q. You are sure that there were two firemen on board?

A. Yes, sir.

(Signed) JOHN C. MILLER.

APRIL 9TH, 1872.

135 Testimony of SAMUEL LOGAN, M. D., sworn and examined for libellant:

Q. Be kind enough to say how long you have been practicing medicine and surgery.

A. Since 1853. I am at present professor of surgery in the New Orleans School of Medicine.

Q. Have you been in attendance on George Pursglove, the libellant, since he has suffered from this accident?

A. I have been since about twelve hours after the accident occurred.

Q. Say what his condition was when you first saw him then?

A. I found him lying down, unable to turn in bed, with a slight febrile excitement and heated head, apparently recovering from a severe accident; with two ribs on one side fractured and one on the other; and severe contusions, involving the head, neck, shoulders, and back. That was the condition I found him in.

Q. Have you been attending him from that time until now?

A. Yes, sir; and still have him in professional charge.

136 Q. In what condition is he in now?

A. He has recovered from the fractured ribs and contusions of the soft parts; but I do not consider him yet quite recovered from the probable concussion of the brain and spinal cord, which were the most serious features of his case.

Q. Did you prescribe for him?

A. Of course I have prescribed for him and attended him regularly.

Q. Is his condition such that he is able to pursue his occupation actively?

A. His condition is not such that he can pursue an active occupation with safety at present.

Q. Is not it possible that he may be permanently disabled from pursuing an active occupation?

A. In those cases of injuries to the brain and spinal cord it is impossible for us always to tell whether the patient will ever be as strong as he was before; sometimes patients will permamently recover, at other times they are permanently impaired in their activity.

Q. How in this particular case?

137 A. The recovery not yet having taken place, I am unable at present to say whether he will ever recover entirely.

Q. Be kind enough to state what your charge for medical and surgical services is up to date?

A. About two hundred and fifty dollars. The bill being larger than it would be if I had not to leave the city to visit him, that is, if he had a residence in New Orleans. I had to go six miles to visit him.

Q. Did he not undergo great bodily suffering from this accident?

A. I suppose he must have done. Sometimes he was suffering severely.

Cross-examined:

Q. Judging from his present appearance, do you not think he will recover entirely?

A. I cannot tell; it is a most insidious and inscrutable case in regard to the future.

Q. Has he not improved as rapidly as generally men do under the same circumstances?

138 A. His improvement has been about the average of those sort of cases.

Q. What proportion of this kind of cases recover in men of his age and physique?

A. I cannot remember statistics on the subject. My impression would be of a very indefinite character. I do not remember the exact statistical record, because, the nature of the injuries being indefinite themselves, the statistics would not be valuable.

Q. Where does he live?

A. In Carrollton.

Q. What is the difference in charge, having to attend him there or in the city.

A. I usually charge about twenty dollars a visit to go to Carrollton and in the city about five dollars.

Q. How long has he been in this position?

A. I cannot be certain, but I think about a year ago was the time I was called to attend him.

Q. You have visited him regularly before you attended him for these injuries?

A. I never visited him, but I prescribed for him at my office.

139 Q. You have visited Carrollton?

A. I think I have had but one case requiring a visit to Carrollton.

Q. That was not himself?

A. No.

Q. The fractured ribs, were they serious?

A. The fractures were ordinary fractures, nothing remarkably serious about the fractures.

Q. Are those contusions all healed?

A. The contusions are healed.

Q. Were they very serious?

A. They were serious for flesh contusions, which are not in themselves serious. They were large contusions.

Redirect:

Q. Be kind enough to state whether there is any surgeon who resides in Carrollton.

A. There are medical men there. I do not know any man with any reputation as a surgeon at all there. I mean a special reputation. I do not mean to disparage any man, but there are no men there
140 who are looked upon as surgeons.

(Signed) SAML. LOGAN, M. D.

APRIL 13, 1872.

Testimony of D. C. HOLIDAY, examined for libellant, Geo. P. Pursglove.

Q. You are acquainted with Dr. Saml. Logan?

A. I am, very well.

Q. He is a gentleman of standing in the profession?

A. Yes, sir; in every sense of the word.

Q. Have you examined his patient, Mr. Geo. Pursglove, the libellant, for the injuries he sustained by the collision?

A. I have.

Q. State what his present condition is, and when you made the examination?

A. I made it about eight or nine days ago. I found him suffering from great muscular debility, difficult locomotion, and a state of partial paralysis, the result no doubt of the contusion or concussion complained from injury to the spine.

Q. How long have you been acquainted with Mr. Geo. Pursglove?

A. Nineteen or twenty years.

141 Q. What was his condition before this hurt?

A. That of a vigorous, active man.

Q. What is his period of life?

A. I suppose about thirty-two or thirty-three years.

(Libellant being present, says he will forty-four years old in July next.)

WITNESS. I never would have thought it.

Q. Is he in condition now to pursue any active calling?

A. I think not.

Q. Are you able to state when he will recover?

A. No.

Q. What is your opinion on that subject?

A. It is extremely doubtful. I would not give an opinion. I would not give a prognosis.

Q. You mean to say that you consider his recovery extremely doubtful?

A. His permanent and entire recovery, I mean.

Q. State how long you have been practicing medicine and surgery?

A. Twenty-seven years.

Q. And you are a graduate of——

142 A. Of the University of Philadelphia, Pa.

(Signed) DANL. C. HOLLIDAY, M. D.

APRIL 15TH, 1872.

Testimony of L. C. TEBO, examined for libellant, says: I am an apothecary.

Q. You have been filling the prescriptions of Dr. Logan since he has been attending Mr. Geo. Pursglove, the libellant?

A. Yes.

Q. Is this a correct bill of yours for medicines, etc., furnished the libellant since that, and up to date? (Bill shown witness.)

A. Yes, sir.

Q. This is a bill for medicines and drugs furnished to Mr. Geo. Pursglove, the libellant, during his illness?

A. Yes; this is for everthing since the accident—not before.

(Bill offered in evidence, and marked "D D.")

Q. Are the charges in this bill and the sum total correct?

A. Yes.

Q. And these were all actually furnished by you?

A. Yes, sir.

Q. Where is your establishment?

143 A. Corner of Canal avenue and St. Charles street, Carrollton.

Q. How long have you been a druggist?

A. About ten years.

(Signed) L. C. TEBO.

APRIL 15TH, 1872.

Account marked "D. D."

CARROLLTON, *April 15th*, 1872.

Mr. Geo. Pursglove to L. C. Tebo, apothecary, Dr.

1872.

Feb.	11.	1 bottle syr. wild cherry and tar	$1 00
"	"	Puff & box	1 50
"	"	Tinc't arnica	1 50
"	"	Pectoral flowers	75
"	"	Valerian root	1 00
"	"	Carbolic soap	50
"	"	R. 12,722 and 12,723	2 50
"	"	Box mustard, 50c.; troches, 35	85
"	"	Glycerine	1 00
"	"	1 bottle Hall's Renewer	1 00
"	12.	R. 12,726	1 50
"	"	Comb, $1.50; brush, $2.50	4 00
"	13.	Lime-water	50
"	14.	R. 12,738	1 00
"	16.	Adhesive plaster	1 00
"	"	Bottle bay-rum	1 25
"	"	Bottle cologne, 1.25; gum, 5c	1 30
	"	19. Box mustard	50
144	Feb.	19. Marsh mallow-root, 25; liquorice, 10	35
	"	" R. 12,777	2 50
"	20.	R. 12,786	2 50
"	"	Rice powder, 5c.; flaxsee', 25	30
"	21.	R. 12,723	2 50
"	"	Gum drops	50
"	"	Bottle syr. wild cherry and tar	1 00
"	25.	Brown's troches, 35; cologne 25	60
"	28.	Rice powder, 15; pennyroyal, 5	20
"	"	Bottle bay-rum	1 25

"	"	Carbolic soap	75
"	"	Lycopodium, 25; castor-oil capsules, 25	50
"	"	R. R. pills	25
M'ch	3.	R. 12,723	2 50
"	"	R. 12,738	1 00
"	"	Rock candy, 20c; sal soda, 10	30
"	"	Vial essence lemon, 50; ½ tapioca, 25	75
"	"	Note paper, 15c.; envelopes, 25	40
"	4.	12,786 R	2 50
"	"	Essence vanilla	75
"	"	Bottle schnapps	1 50
"	"	4 opedeldoc soap	1 50
"	5.	Brown's troches	30
"	10.	R. 12,723	2 50
"	"	Tweezers, 25; Tarrant's, 1.00	1 25
"	13,	R. 12,723, (double quantity)	5 00
"	"	Syrup tolu	50
"	"	Syrup squills	50
"	"	Bottle s. syrup	35
	"	" Hoffman's anodyne	1 00
145	M'ch	19. R. 11,039	50
	April	12. Bottle Tarrant's, 1.00; s. gum, 05c	1 05
		13. R. 12,723, (double quantity)	5 00
	"	Tinct. arnica	1 50
	"	Candy, 10; gum, 10	20
	"	Bottle cologne	1 25
	"	Carbolic soap	75
			$69 25

Testimony of C. LESTER, sworn and examined for libellant, says:

I am an engineer by profession, and I am a mechanic in general.

Q. Are you not a boat-builder?

A. I have superintended a great deal of boat-building in Pittsburg and Cincinnati.

Q. Are you acquainted withe the value of materials and their quality for building and repairing boats?

A. I am.

Q. How long have you been in the business?

A. I have been in the business since 1840.

Q. Did you make a survey of the Neafie to ascertain the damage done her by the collision with the Juniata?

A. I did.

Q. State what the damage was, and what it would cost to repair it.

A. I think we put a very low estimate on it—just what it would
146 actually cost, provided there was no delay or anything about it; six hundred and fifty dollars, I think, was our estimate to cut the sheets out—by sheets I mean the planking of the boat; she is of iron. The sheets between eight and nine timbers—frames, I think, in an iron boat; they call them timbers here, but in the old country they call them ribs—between nine of those timbers the sheets of the side of the boat are all doubled up; they are made of boiler-iron sheets, and to cut them and put them back and put the boat on the dock, we estimated the cost at six hundred and fifty dollars.

Q. You say "we;" whom do you mean?

A. Mr. Eaken, who was with me, and myself.

Q. What other damage was done?

A. The house on top is badly wrecked—knocked over to one side—broke loose from the deck.

Q. Where is it broke loose?

A. From the deck where it is fastened.

Q. What would cost to repair it?

A. I think a hundred dollars is a very low estimate to put on
147 that.

Q. What other damage has been done to the Neafie?

A. Her decks sprung a good deal. The deck started off the timbers, and has to be all spiked down and recaulked again to put the boat in order like she ought to be. The concussion drew the spikes and sprung the deck up.

Q. What would it cost to put it in the order, as you express it, that it ought to be in?

A. To replace that deck, put it back like it was, it could not be done less than a hundred dollars. To spike down, recaulk it, and pitch it, it could not be done for less than a hundred dollars—and her bits fixed; they are knocked loose.

Q. What do you mean by the "bits?"

A. They are in the forward end of the boat to make fast and hold her to—two posts.

Q. Are they injured?

A. The deck frame is knocked loose, and of course they are loose and not safe. The deck frame holds them, and when the deck frame is knocked loose they are loose.

Q. Is there any other damage done?

148 A. I think that is about all I saw.

Q. Did you estimate the cost of docking her, and the necessary demurrage?

A. We did not allow any demurrage at all on the boat.

Q. What is the cost of docking her?

A. I do not know her tonnage. They charge so much a ton. Then it is customary to allow twenty-five dollars a day demurrage. The boat is taken out on the dock, and demurrage means twenty-five dollars a day for every day she lays there. If it takes the iron-makers or boiler-makers a week to fix it, that is twenty-five dollars a day for the boat laying on the dock. We included the dockage, and one day for her on the dock; and if it takes them longer it costs more.

Q. What is the sum total of the damages, as estimated by you, on the survey?

A. Six hundred and fifty dollars to do the work on the boat; a hun-
dred dollars to fix the house, which is a very low estimate, and a
149 hundred dollars to fix the deck and bits, and put the deck frame back in its place and secure it. A gang of boiler-makers ought to do that work in six days, repair the boat, and put the hull in good order. They charge, on the dock, twenty-five dollars a day, what they term demurrage for the boat laying there. If Mr. Pursglove, or you, or any other man, sees proper to keep it there three months, you have to pay twenty-five dollars a day for doing so. A gang is two riviters, a helper, and a heater, that is four men.

Q. What would be the cost of employing them for that time to do that work; do you include that in the estimate?

A. Yes, sir; in the six hundred and fifty dollars. To give them six

days to do it and furnish the material, I estimate it at six hundred and fifty dollars to do the work.

Q. Do you include in this estimate the cost of the material?

A. I include the cost of the material and to put it on the boat;

150 but I do not include the dockage or the time she lays on the dock.

Cross-examined:

Q. Has that boat been running, doing the ordinary trade, since the 10th of February last, employed as she ordinarily was?

A. That I could not tell. I have seen her passing along within the last three or four days towing some little luggers up the river. I have not seen her do heavy work like the others, and I have been on the river at work.

Q. Have you known her do any work since the 10th of February that she could not do; to leave it after her?

A. No; I know but little about her business or any of the rest, except seeing them pass along.

Q. Could not that denting of the hull be repaired without cutting out the iron?

A. No; the timbers are sprung.

Q. Could not you make the timbers spring back?

A. You cannot without taking the sheets out on the bow.

Q. Cannot you beat out the hull of an iron vessel when dented

151 by coming into collision, and beat it back to its original shape?

A. No; they tried that experiment on the John F. Moore.

Q. I ask if it can be done?

A. It cannot be done without taking the sheets off.

Q. No dent can be beaten out of the hull of a vessel and put back into the original shape, except the sheets are taken of' the ribs?

A. No; the sheets must go through the rollers and be straightened.

Q. Does this vessel leak any from the dents?

A. I could not say she leaks, because she stands pretty high out of water. As I saw her it is out of water. It might leak if the boat was loaded down to the water.

Q. Whereabouts is this dent in the hull?

A. In her starboard quarter.

Q. How far above the water when she is light?

A. I think it comes very near the water-line.

Q. What is the length of it?

A. It is between nine timbers; they are about sixteen inches centres.

Q. You mean from centre to centre of each rib is sixteen inches.

152 A. Yes, sir; and it is between nine timbers; between nine of them it is bent in.

Q. How wide is it up and down perpendicular?

A. It varies; in some places it goes into the second sheet and in some it is only in one.

Q. How wide is a sheet?

A. They should be twenty-four inches from rivet-hole to rivet-hole. The sheet is twenty-six inches wide, but they punch an inch from the edge and call them twenty-four inches.

Q. Why had not she been repaired; is not that the accurate way to ascertain the damage?

A. Perhaps they could not get her on the dock; I do not know; if it was my vessel and I was going to repair her, I should know the damage first and what it would cost before I would put her on the dock and repair her. I would not put her there without knowing.

Q. That you would have to ascertain by applying to the dock men?
A. To the boiler-maker; the men that puts the iron on.
Q. Are you one?
153 A. I have worked a great deal at it.
Q. Are you now?
A. No.
Q. When have you quit working any?
A. I have not worked any for several years, but I am having it done every day.
Q. Did you estimate that with the expectation of having it done yourself?
A. No; I am engaged in another way altogether. Then I was foreman in Ivens' iron-works. They do not do that kind of work, do not do boiler-work. All the boiler-work I did while there I got outside men to do it.
Q. Are you paid for getting them to do it, or get the jobs for them, and let them do it?
A. I am paid in this way: I am Ivens' foreman, and, whenever necessary to be done, I hire the boiler-makers to do it, and he pays me my salary.
Q. Does he repair vessels for this sort of damage?
A. No.
154 Q. Why did they come to you to get an estimate?
A. That I could not tell you.
Q. I asked awhile ago why she was not repaired. What was the reason?
A. That I cannot answer further than what the captain of the vessel told me. The captain told me that Mr. Pursglove, the owner, was so badly hurt that he dare not talk business to him nor say anything about the boat, and he was going to run her and do the best he could until the owner could attend to his own business and direct him what to do. That was the amount of what he told me; that was what it meant.
Q. How long has Mr. Pursglove been up and *and* around [or] about?
A. That I could not tell you. The first time I saw him in town away from his house, was, I think, Tuesday or Wednesday of this week. I was at his house once, but that was the first time I saw him down town.
Q. But you know he has been out long before that?
A. No; that was the first time I know he was out; it was Tues-
155 day or Wednesday of this week.
Q. How often did you visit him at his house?
A. Never but once.
Q. How long was that after he was hurt?
A. It was about twenty days, from eighteen to twenty days. I went into his room where he was in bed.

Redirect:

Q. Are not Ivens & Co. large dealers in iron and machinery in this city?
A. Yes, sir.
Q. Have not they got a foundry?
A. Yes, sir; in St. Joseph street.
Q. Is not Ivens, to your knowledge, a great friend of Captain Pursglove, the libellant in this suit?
A. I have seen them talking and doing business together.
Q. Did not Mr. Ivens request you to go and make this survey for Mr. Pursglove?

A. Yes, sir.
Q. Mr. Pursglove was sick at the time?
A. Yes, sir; Mr. Ivens told me that he had been up to Mr. Pursglove's, and as he was not able to attend to any business of his own, re-
156 quested me to *to* do it.
Q. You say you have been a long time in this business; how many boats did you ever build?
A. I superintended the building of a good many, of ten or eleven different boats, and repaired boats. I have superintended the building of eleven steamboats for Robertson & Minnins, Pittsburg.
Q. How old a man are you?
A. I was forty-eight years old the 2nd of last December.

Recross:

Q. What time was it you made this survey?
A. I could not state the day.
Q. How long after the injury happened?
A. I think, on the 6th or 7th day of March, it was. It was between the 5th and eighth of March anyhow.
Q. You made that estimate under the directions of Mr. Ivens?
A. No; he was not with us.
Q. I mean at his request?
A. I made it at his request.
Q. He stated to you Mr. Pursglove was unable to attend to his
157 business and he wanted to see what the repairs would cost?
A. Yes, sir; exactly.
Q. She has never been repaired yet or put in dock that you are aware of?
A. Not that I am aware of.
(Signed) CHARLES LESTER.
APRIL 13TH, 1872.

Testimony of D. R. EAKEN, sworn and examined for the libellant, says:

I know Mr. Charles Lester, the last witness; he is an engineer and machinist and foreman of Mr. Ivens.
Q. Did you make a survey of the Neafie in company with him?
A. Yes, sir.
Q. Have you heard his testimony?
A. Yes, sir.
Q. Can you corroborate the correctness of his survey, the items and general result?
A. Yes, sir.
Q. Do you consider yourself competent to pass upon such work?
A. I do.
Q. You know the price and value of the labor and material in such work?
A. Yes, sir.
No cross-examination.
(Signed) D. R. EAKEN.
APRIL 13TH, 1872.

158 Testimony of GEO. PURSGLOVE, sworn and examined for libellant, says:

I am the libellant in this case. I am forty-four years old. I am a married man, and have six children living.

Q. Are you the owner of the tug-boat Neafie?
A. Yes, sir; I am sole owner.
Q. Were you on her on the 10th of February last?
A. Yes, sir.
Q. State how the Neafie was engaged on the 10th of February.
A. On the of February I purchased a flat-boat from Major Howell, United States major of engineers, to load with five hundred barrels of cement to be taken from the steamer Juniata to Fort Jackson. I had the stevedore of the Juniata to load us with cement from the wharf to the flat-boat for Major Howell, and when it was loaded had the Neafie to come alongside of the flat to tow it down the river. About half past five o'clock on the evening of the 10th, we started from alongside of the Juniata and went down in our regular speed down the river, without anything occurring until we got to McCaul's Flats, about
159 twenty-four miles below the city, when the steamer Sherman, that was laying at the wharf when we left, passed us. The coast-packets had passed down ahead of us. When we got about to the St. Rosalie plantation, between two and three miles above Poverty Point, we saw the Heuseley laying against the shore at the time on the right bank; it was a foggy, which caused me to go out of the pilot-house upon the pilot-house to see how high the fog was, and watch the course of the boat which the captain was steering. The Heuseley was laying at the time putting out freight. After we got some distance below her it cleared off and I went down from the roof. The boat then continued on to Poverty Point, and it being clearer on the left side then on the right, the captain held the boat close to the point, as there was no fog on that side. After we had got under the point some short distance, I heard a whistle some distance up the river, which caused me to go again upon the roof, and I observed lights of a steamer coming down on the right-hand bend.
160 I stood on top, right in front of the chimney, and watched the steamer continue on her course, which was correct. She came down on the right until she got to Poverty Point, and then crossed over to the left side of the river until she got, as I judge, about the middle of Dr. Wilkinson's place. She was then heading straight down the river. I noticed her then suddenly change around and hold her bow straight for us, pointing right stem straight. You could see all the lights. I looked at our course. We were then proceeding down the left bank at about two hundred feet from the shore; we were close to the bank. When I saw she did not alter her course, I laid down on the pilot-house and spoke to the pilot at the wheel. We were laying about one point from the shore. I told him the steamer was coming, and he had better hold a little to the left as he had a little room, and then I arose, and as I arose I saw the steamer was on top of me. I thought to run aft to the stern of the boat, but before I could execute any movement I was thrown from my feet; knocked off my feet. I had looked when I saw the lights of the steamer to see if our lights were all burning good, and they were
161 all in perfect condition.
Q. What lights did you have?
A. Two lights on the chimney and a red and green light on the pilot-house. There was no whistle blown, except the one that took me from the pilot-house, which was some ten minutes before this accident occurred. We were going down stream, and it was the duty of the boat that is going to pass to blow the whistle. We would not blow the whistle until we would blow to answer her.
Q. Who was steering your boat?
A. Captain and Pilot Hopper.

Q. Who was on duty?

A. He was on duty. I have no duty on the boat any more than to assist—give him any information at night.

Q. What crew was on the boat?

A. We had the engineer, deck-hand, fireman. I had a watchman, also, on board the flat-boat. We had an extra fireman, too.

Q. Was everybody on duty?

A. Yes, sir; except one fireman that was not on duty.

Q. What is the distance, the height, of that pilot-roof above the deck of your boat?

162 A. About twelve or thirteen feet from the deck to the top of the house. I have not measured.

Q. You do not mean to speak certain?

A. No.

Q. What is the distance between the side of the house on the deck and the bulwarks of your boat?

A. About thirty or thirty-five inches, because it is different according to the sheer of the boat.

Q. You were knocked off your feet. What do you mean?

A. The boat was knocked from under me. I felt myself going, and lost all consciousness.

Q. When you recovered your consciousness, where were you?

A. They had picked me up, and put me in the berth in the pilot-house. We have two berths in the pilot-house.

Q. Were you brought to the city?

A. Yes, sir.

Q. How long were you confined to your bed?

A. From that day until the last two weeks. I will probably have to go to bed to-morrow again—made too much exertion to-day.

163 Q. Have you recovered your personal activity at all?

A. No.

Q. Have you not been under surgical care all that time?

A. Yes, sir.

Q. And you still are?

A. I visit the Dr. now. He says it is not necessary for him to make the trip to Carrollton at all.

Q. You were engaged in towing for Major Howell?

A. Yes, sir.

Q. What was the contract?

A. I agreed to purchase the flat-boat for him; that he gave me carte blanche to do, and have this load put in, and take the flat-boat to Fort Jackson for one hundred and sixty dollars. Then there was towage extra for bringing the flat to the ship, and bringing a bridge-boat to roll the freight down.

Q. Have you demanded payment of that money from Major Howell?

A. I have.

Q. Has he paid you?

A. No; he refused to pay me.

Q. Why was that; was that flat sunk?

A. Yes, sir; the flat was sunk.

164 Q. How was the flat lashed?

A. She was lashed on our port side—on the shore as we were going down.

Q. How did the steamer strike the flat?

A. That I cannot testify to. I do not know, because I was insensible. I have no knowledge of anything that occurred from the moment

I raised up until I returned to my senses. When I returned to consciousness, it must have been two or three hours afterwards. I have never been able to find out from any of them how long I was insensible.

Q. You say this accident happened a little below Poverty Point, on the left bank of the Mississippi River?

A. Yes, sir; right under the point—I suppose a mile or so under the point. I cannot tell exactly.

Q. Are you in the habit of navigating the Mississippi River, up and down, in your boat?

A. I go up and down whenever the captain has a job that takes him out over night. I go to assist him.

Q. Are you acquainted with the usual and proper track of descending vessels in that part of the Mississippi River?

165 A. Yes, sir.

Q. Will you explain what the course of vessels descending the river is, on approaching, passing, and after passing Poverty Point?

A. Coming down the river, she passes down the middle of the river on the bend side—a little to the bend side from the middle. In going down Poverty Point, it is nearly a sharp bend; she will go from the left bend over to the right bend. The right bend, I mean the right hand, going down.

Q. After passing the Point, what does a descending vessel steer for—some landmark?

A. There is a landmark on every portion of the river, trees or sugar-houses in different locations, which pilots know in passing. At Poverty Point you see the chimneys of Dr. Wilkinson's sugar-house, and a descending boat will steer for these chimneys.

Q. What is the location of these chimneys in the sugar-house of Dr. Wilkinson?

166 A. On the right bank in the bend, but they show right over the point. They are not over a mile below the upper end of the point.

Q. After opening the bend what does a vessel do?

A. Steers straight down the river—a straight reach.

Q. What is the reason that descending vessels pursue that course?

A. To keep in the current; that is the rule of pilots.

Q. But is there not another reason for that connected with descending vessels?

A. Yes; to keep out of the way of ascending vessels.

Q. What is the course of ascending vessels?

A. Up the river in the slack-water under the point.

Q. On this occasion what was the reason for your running close in to the left bank.

A. For the reason that it was very foggy on the right bank, and our object was to make a landing if it got so foggy we could not see. We could see on that side; no ascending vessels were coming up; if they were we should have stopped.

167 Q. Had [did] the knowledge that the Juniata was on the river departing have anything to do with it?

A. Yes, sir; caused us to go over there to give her plenty of room to go by, so she should not disturb the flat we had in tow, for the cargo was perilous. We always, if we have a flat in tow, keep out of the way of steamers, if we know they are coming, so that the waves will not affect our boat.

Q. Were you running slow?

A. We were running at our regular speed; not any excess. We were going about five miles an hour.

Q. How long did it take you to go from Jackson Square to Poverty Point?

A. Over five hours—six hours.

Q. How long do [have] you own[ed] the Neafie?

A. Five years I have owned her.

Q. Have you kept regular accounts of the earnings of the Neafie?

A. Yes; in a rough way.

Q. Have you entered up your earnings as you made them?

A. Yes, sir.

Q. Entered them up yourself?

A. Yes, sir.

168 Q. Give us a statement of the earnings of the Neafie for the last three years?

A. In 1867, $19,430.71 gross; in 1868, $17,435.50, gross; in 1869, $20,797.50, gross; in 1870, $20,672.37, gross.

Q. That is taken from the books which you made yourself?

A. Yes, sir. For 1871 I have not got. The captain has it. It is not made up. My year commences from March.

Q. You made this statement from entries made by yourself cotemporaneously with the earnings?

A. Yes, sir; taken from each month.

(Statement offered in evidence, and marked "D.")

Q. What is your department in transacting the Neafie's business?

A. My business is to solicit work and make her collections. I get her business altogether.

Q. How does her business compare with that of other tow-boats engaged in similar business in the harbor?

A. I have been credited with doing as much business as any boat in the harbor of that class.

Q. Could your personal services be replaced in this business?

A. No.

169 Q. Have you been able to render any services since this accident?

A. No; not a particle.

Q. Can you do so now?

A. No; I cannot walk six squares.

Q. What is the busiest season of the year, and the most profitable, in the harbor of New Orleans, for this business in which you are engaged?

A. We commence in December, [and continue] up to August. Sometimes the river rises a little earlier than at other times.

Q. I want to find out whether this accident occurred to you at the busy season or not.

A. It has; the monthly accounts will show that.

Q. What is the size of your boat?

A. Seventy-five tons.

Q. What is the character of her business?

A. Her business is general jobbing business; moving in the harbor and on the coast.

Q. Tell us the character of her jobs, large and small. In general what do they range from?

A. We move a flat in the harbor for ten dollars. To move a

170 flat up the river or down the river, the job may range from ten dollars to a hundred dollars or a hundred and fifty dollars. And sometimes we tow rafts, and the jobs range as high as seven or eight

hundred dollars. Ships pay ten dollars to fifteen dollars in port for moving; twenty dollars for large vessels. The price varies according to tonnage.

Q. Has your business suffered since you experienced this disaster?

A. They have not been making their running expenses since I have been laid up. February the captain reports making eight hundred and thirty dollars.

Q. When the Juniata struck you, did she appear to be coming full speed?

A. Yes, sir.

Q. On which side did she strike you?

A. On the right side—the starboard side.

Q. Did the Juniata give a signal of her approach?

A. There was no signal given of her approach to us. The
171 whistle given about ten minutes before was the whistle given when she was passing the Heuesley.

Q. At the time just before the collision occurred, did you see Sam. Williams, cook of your tug?

A. As I went out of the pilot-house to go on the roof, I saw him in the kitchen playing the fiddle.

Q. Do you know whether the first engineer was at his post?

A. I know he was at his post.

Q. What is his name?

A. West Cassel.

Q. You stated this business depends upon your outdoor exertions very much; is the competition in the business great?

A. Yes; there is a great deal of competition in the business.

Q. How many other tugs are there engaged in this peculiar kind of business?

A. Some six or seven; the Alliance, Continental, Ella Wood No. 1 and 2, the Admiral, the Nellie, the Fern.

Q. When was this business begun?

A. It has existed ever since the war; ever since navigation commenced.

172 Q. It is this competition which makes the outdoor exertions of running and soliciting of patronage necessary?

A. The person on shore has to know when vessels have to be moved in order to get the work, and consequently he has to travel from one end of the port to the other to see what vessels may want to be moved. I start from Carrollton and come down along the levee every morning of my life when I am on business, part on railroad and part on foot.

Q. Does it require an extensive acquaintance and active intercourse?

A. Yes, sir; I am acquainted with everybody engaged in receiving produce in boats here; and the planters purchasing supplies send me their orders to get coal and wood, and in addition I do a good deal of freighting in my business with a barge. I have a barge to tow, carrying bricks, etc., to points up and down the coast.

Q. Does it require your constant personal attention?

173 A. I never take command of the boat when the captain is on board.

Q. What personal damage have you suffered, as far as you know?

A. I have three ribs broken, and a contusion of the spine; also bruises on the head, which have kept me for five weeks before I could get out of bed at all. I do not know how soon I will be able to attend to business again and my strength and activity will return.

Q. It is lost for the time being?

A. Yes, sir; I have consulted doctors, and they tell me nothing but time will do it.

Cross-examined:

Q. When you discovered the "Juniata" coming to you, how far was she from you?

A. In the night we cannot tell well. But she was about, I think, three-quarters of a mile when I first saw her change her course towards us, and she held that course for some time before I stooped down to speak to the captain. I thought she would change and straighten
174 up and go on down the river, her proper course. When I saw she was coming too close, I then lay down to speak to the captain.

Q. How far was she from you when you lay down on the top of the pilot-house to speak to the captain?

A. I do not think she was more than one-third the width of the river.

Q. How wide is the river at that place?

A. The river is not quite a mile wide there.

Q. What could you see of her—her lights or the boat?

A. I could see her lights, and most everything plain.

Q. Whereabouts on the shore was she, or near, when she turned first to go towards you?

A. She run down to the lower end of the eddy—to about the middle of *of* Wilkinson's plantation; she run down on the right.

Q. How far down in the right-hand bend did she go before she first turned to go towards you?

A. She got below the point, opposite what we call the head of
175 the point. There are two heads on that point. The willows, at Wilkinson's, extend above the point on the opposite side and run down some quarter of a mile below.

Q. The willows on the right-hand side extend how far above Wilkinson's and how far below?

A. They commenced about half a mile above his house, and run on up above the point.

Q. When the vessel first started towards you, where was she about?

A. At about the marked "3" on the map.

Q. Where was your boat at that time about?

A. About X; I mean to approximate. Until the Juniata arrived at 3, she was coming straight down the river in her proper course, when she suddenly changed right towards me at X; and I suppose I watched her at least three or four minutes, expecting her to change her position. When I found she did not, I spoke to the captain.

Q. How far below X did you reach before the collision occurred?

176 A. I could not tell you.

Q. Was there any remark made by those on board the Juniata as you approached one another?

A. Not that I heard.

Q. Was there any lookout in front looking out besides yourself and the man at the wheel?

A. Yes, sir; I had a watchman on the flat-boat.

Q. There was no other lookout on your boat?

A. No.

Q. You were on top of the pilot-house, above the pilot?

A. Yes, sir. On a tug, when a fog rises and you are down below, there will be a low fog that will obstruct the sight, but when you get on top of the house you can see across the river on both sides. The fog rises from the water and keeps ascending.

Q. When you saw the Juniata coming on to you did you give no signal at all?

A. No.

Q. Did you make no alarm?

A. I told the captain she was coming.

Q. Did he order no signals to be given?

177 A. No; he had no time. He stopped the boat.

Q. Would it not have been wise when you saw her three or four hundred yards off coming towards you to have given an alarm?

A. We have no right to give any alarm for a boat coming after us. The passing boat always gives the signal when both are going the same way. We always wait for the signal of a boat that is passing us.

Q. I am not speaking of a signal, but of an alarm. You saw a boat approaching you and a collision inevitable; would it not have been prudent to give an alarm to the vessel, to let them know you were there and in the way of being destroyed?

A, They could see it.

Q. Would not it be prudent to give the alarm?

A. I gave the alarm by telling the captain, who has control of the whistle.

Q. I ask if the captain ought not have given the alarm when you told him the ship was approaching?

178 A. The very moment I told him he stopped his engine, otherwise she would have gone right through the middle of us.

Q. What angle was she coming at you?

A. At an angle of about forty-five degrees. The only way I could give the angle exactly is to make a model.

Q. How many times have you navigated down the Mississippi River your boat?

A. For the last five years once or twice a month, a trip down and up. Our business is generally in the harbor, but these jobs occur sometimes two or three times a month, and sometimes only once a month. They are very uncertain.

Q. Was there much fog on the water that night?

A. On the right bank the fog was about ten feet high from the water.

Q. How far out in the river did it extend?

A. It extended about one-third of the way from the right bank.

Q. And the rest of the river was clear?

179 A. Yes, sir; on the windward side.

Redirect:

Q. What are your circumstances?

A. I am a poor man. I have got that boat, that does not bring much now. I have got the house I live in. I was out of debt before this. This season I spent some money repairing the boat, and am probably eight or nine hundred dollars in debt. I do not know what my bills are. I have always been able to maintain my family and keep out of debt.

Q. The maint*a*inance of your family depends on this business?

A. Entirely.

Q. You were asked was there any other lookout. What were the other men doing except the fireman off duty?

A. I could not state what they were doing. I know every man was attending to his business; the engineer was attending to his engine, and the fireman to the fires. I saw the watchman standing on

180 the deck of the flat-boat when I was on the deck of the tug. We

had plenty of lights—light in the cabin, light in the engine-room, and light in the kitchen.

(Signed) GEO. PURSGLOVE.

APRIL 9TH, 1872.

GEO. PURSGLOVE recalled for the libellant.

In order to explain in regard to his testimony given on April 9th, 1872, witness says:

"In the first part of my testimony, in describing the course of the steamer, I said, as I was looking up the river, I said I observed the lights of a steamer coming down the river on the right-hand bend. I meant to say she was on the right-hand bend as I stood to look up the river. It should have been the left-hand bend of the river."

Then, further on, when I say, "I stood on the right, right in front of the chimney, and watched the steamer continue on her course, which was correct. She came down the right until she got to Poverty Point, and then crossed over to the left." That is wrong. It is the re-
181 verse of that. It ought to be, she came down the left hand and crossed over to the right hand of the river as the banks are named. I made the mistake, for I was describing as I stood on the boat looking up the river; she was on my right hand at that time.

(Signed) GEO. PURSGLOVE.

APRIL 9TH, 1872.

GEO. PURSGLOVE examined for the libellant.

Q. What did you pay for that barge that you sold to Major Howell?

A. One hundred and forty dollars.

(Witness produces the receipt, which is offered in evidence, and marked Y.)

Q. It was worth that amount?

A. Yes, sir. I bought it second hand. A man bought it to break; that was the lowest I could get it for.

Q. Are you in the habit of buying flat-boats and charging for the service?

A. Yes, sir. I buy and sell.

Q. You do business outside the mere tonnage?

A. Yes, sir.

182 Q. What is the character?

A. Buying and selling flat-boats, hiring barges, and moving bulk-freights, bricks, lumber, etc., up and down the coast with a barge.

Q. What is your business of that kind worth entirely outside of the Neafiee's?

A. It is worth from $150 to $200 a month in the business season.

Q. Has that business been interrupted and broken up by this accident?

A. Yes, sir.

Q. How has this business been since you met this accident?

A. In looking over I find we have run in debt about $2,500 since I have been laid up. Bills payable amount to over $2,600.

Q. How were your debts when the accident occurred?

A. We were not more than $400 or $500 in debt when I laid down, and I had just paid for the repairs of the boat.

Cross-examined for the Juniata:

Q. Has your tug been constantly employed since your injury?

183 A. She has had steam up every day, but not been employed.

Q. Why was she not employed?
A. Because they could not get the business.
Q. Was the business here to be got?
A. It was; the business was here. The competition is very great in the business now.
Q. How many boats are engaged in the same business now?
A. Four or five boats. In fact all the men dealing in coal business are doing this business this year.
Q. How long?
A. The whole season their business has been bad, and they took turns in our business.
Q. How many of these coal men have turned into your business?
A. The Admiral, the Ella Wood, Charley Wood, Continental, Reliance, Nellie—every boat of them.
Q. Then there are some six, eight, or ten engaged in that business, competing tonnage?
A. They have always heretofore been in it, but particularly this season.
184 Q. On the ground that there is nothing doing in their own business?
A. Yes, sir.
Q. Would not that fact alone have diminished your business, whether you had been on your feet or not?
A. No.
Q. The more competition you have, the more business?
A. I am well known on the levee and city, and I am well advised on any business going on. That was the business I attended to.
Q. Are not these other men as well advised as you are?
A. Yes, sir.
Q. Are they not as popular as you are?
A. Yes; but having followed it for five years I have the preference.
Q. Have you not always found, all things being equal, that the man who does the work cheapest gets it?
A. I never allow people to do work cheaper than I can do it.
Q. Has the price of that kind of work increased or diminished
185 this fall, winter, or spring?
A. It is about the same.
Q But the quantity of boats engaged in it is larger than heretofore, and the time they devote to it is greater than heretofore?
A. That has been the case within the last two or three months, or two months.
Q. You have made nothing, then, since you were injured; but, on the contrary, are $2,500 in debt?
A. Yes, sir.
Q. Who have you in charge of your boat?
A. Captain Hopper.
Q. How long has he been in charge of her?
A. Nearly two years.
Q. He is a very energetic, good man?
A. Yes, sir.
Q. Prompt in the discharge of his duties?
A. Yes, sir.
Q. As much so as other men engaged in the same business?
A. Equally so.

(Signed) GEO. PURSGLOVE.

MAY 30TH, 1872.

186 Testimony of E. M. IVENS, examined for libellant, says:

I am a manufacturer of and dealer in machinery.

Q. How long have you known Geo. Pursglove, the libellant?

A. Since 1858.

Q. What is the business in which he is engaged?

A. At present he is the owner of and operating the steam-tug Neafie.

Q. What is the nature of the business of the Neafie?

A. She is a tow-boat in the harbor of New Orleans.

Q. Is the competition in that business great?

A. Yes; there are quite a number of tug-boats engaged in it.

Q. Do you know how long Mr. Pursglove has been in it?

A. I do not remember exactly; I should judge about five years, or in that neighborhood.

Q. Do you know how the business which he is able to do compares with [that of] others in the same business, harbor tonnage business?

A. Meeting him every day in connection with others in his
187 line of business, I think he did the first business of any single tow-boat in the harbor.

Q. Does that result from his personal popularity?

A. Entirely. By his industry and attention to his business, and the number of friends that he has, that throws the work into his hands.

Q. What branch of the business of the Neafie does he attend to himself?

A. He has been attending to all the branches of the business except the real management of the labor on the boat.

Q. What do you mean by all branches?

A. Attending to the finances, making contracts for his boat; to tow, paying and hiring his crew; soliciting business, and everything connected with the tonnage line. He has been the only person I know of to attend to the business at all until lately, when he had a person attending to his business while he has been sick.

Q. Is it a business that requires much activity?

188 A. I think there is none more so in the city.

Q. Was he an active man in it?

A. I think Mr. Pursgrove, knowing him as I do, is one of the most active men in the city of New Orleans.

No cross-examination.

(Signed) EDMUND M. IVENS.

APRIL 24TH, 1872.

Testimony of JOHN PATTON, sworn and examined for libellant, says:

I am a broker, selling produce on the levee. I am acquainted with Geo. Pursglove, the libellant in this suit. I have known him at least four years, or perhaps over.

Q. Are you in the habit of seeing him frequently?

A. Yes, sir.

Q. What business is he in?

A. He had a tow-boat on the river and was attending to the duties of it. He has the tow-boat yet.

Q. What were these duties?

A. The most important was procuring business for the boat. That required a great deal of energy and industry. Mr. Pursglove
189 appeared to give it his whole attention. He was very vigilant.

Q. Is the competition in his business great?

A. Yes, sir; at present there is a lively competition.

Q. Does success in that business not depend upon the good will acquired in it and the activity of the man who attends to it?

A. I think it depends altogether on that.

Q. State what good will you think he acquired, and popularity in the business.

A. I could not say the amount of it, but he appeared to be well liked by every one, except by those in the opposition, who, of course, do not speak well of each other.

Q. Does not the business depends upon his personal activity and endeavors to a great extent?

A. Yes, sir.

Cross-examined:

Q. You say the competition now is very great?

A. Yes, sir.

Q. How long has it been so?

A. For the last year or two. There always has been competi-
190 tion, but not so great as within the last year or two.

Redirect:

Q. What opportunity have you had of observing his business and the harbor towage business in general?

A. I have been right on the levee and have had a good deal of towing to do which Mr. Pursglove did a good deal of, and very satisfactory; and I have seen him get other boats to tow right along the harbor.

Q. Does your business keep you on the levee?

A. It does, most of the time.

Q. You are a broker, selling produce?

A. Yes, sir.

Q. Do you sell much of it?

A. Yes, sir; I sell principally hay—a very large amount of that. I sell for Pleasants.

Q. How does hay generally come in?

A. In flat-boats and barges, and some in steamboats. The principal part comes on barges and flat-boats. It always requires towage to transfer it. Pleasants & Co., for whom I sell, do a larger business in hay than any one else here.

(Signed) JOHN PATTON.

APRIL 24TH, 1872.

191 Testimony of CHRIS. VALLY, sworn and examined for the libellant.

Q. What is your business?

A. I am master of the tug Admiral.

Q. Where were you with your tug on the night of the 10th of February?

A. Going down the river.

Q. Was the Neafie in the river that night?

A. Yes, sir; about a mile and a half or a mile and three-quarters ahead of me.

Q. What sort of a night was it?

A. A very pleasant night.

Q. Could you see well that night?

A. I could see pretty well. I could see four or five miles each way; that was a good distance.

Q. Could you see the lights of the Neafie?

A. Yes, sir; I saw her after light.
Q. Could you see her smoke running [issuing?] from her smoke stack?
A. Yes, sir.
Q. Did you see the Neafie when she turned Poverty Point?
A. Yes, sir; I do not suppose, at the time she turned Poverty
192 Point, I was quite a mile and a half from her, because I was gaining on her all the time.
Q. How did she run when she turned Poverty Point; near what bank?
A. I think she turned to the left bank, as near as I could judge from the way she rounded the point.
Q. And you could see the smoke?
A. Just as plain as could be. It was what we called a good starlight night.
Q. There was some fog on the river that night?
A. There was a little, but not enough to say anything of; because you could see over the top of it. What little haze there was was nothing; because, if such haze as that would blind people, they never would run.
Q. Where did the Juniata pass you?
A. She passed me somewhere about Doyle's. They have got a new name for it now. Doyle's is 28 miles down the river, or a little over 28 miles. My cook called my attention to her, and she was then astern of me. He said, "Captain, there is a vessel coming down; seems to be going to run into McCall's Flats." I put my head out of the window
193 to see what was the matter. I said, "I guess that fellow is going to put that ship ashore." He said, "At the range he is taking he must be crazy." I paid attention then to my boat, now and then looking out to see him. We sheered over the point of the flats—the flat comes around in a sort of a circle—and as he came over the flats, he went from what we call the point of the flats, and struck in a line right for the opposite shore—for the other point on the opposite bank of the river. And when he passed me he was what we call at the Willows, on the opposite shore, going down on that side, from what he should be following, the bend shore. A man going down the river ought to follow the bend, but he followed no bend at all. He made short cuts of it. That night I was going down to Point La Hache school-house. I had a flat-boat, nearly empty. She was 165 feet long and had only 20,000 brick in her, and she did not draw over five inches of water. You may call her empty.
Q. Where did you pass the Neafie?
194 A. About three-quarters of a mile under Poverty Point. At the time I passed her her engines were working. He must have been trying to land. The boat was in alongside the bank. I passed along down my regular direction, taking the sheer of the river along down. I blew my whistle, thinking probably it was a boat coming up, but did not get an answer, so I waited. In the mean time my engineer came forward, and I said to him, "I be damned if that is not the Neafie in there." He said, "They are better off than we are; they lay up and will not work all night like we do. They take it easy."
Q. What bank was the Neafie alongside; the left or right?
A. The left.
Q. Did you see the flat-boat there when you came back?
A. Yes; the flat was there where I passed the Neafie when I came back. As near as I could judge about the spot where I passed the Neafie. It was about three-quarters of a mile below the point on the

left bank, under a little bit of a curve, a little point that sticks out below the eddy. She was in on the flat below the eddy.

Q. What was the condition of the flat?

195 A. Her whole end was out; one end, as near as I could judge. I did not go alongside, but passed her at about 45 feet or 50 feet from her.

Q. At what rate of speed was the Juniata going when she passed you?

A. Going like a race-horse when she passed me.

Cross-examined for steamship Juniata:

Q. What tug-boat were you in?

A. On the Admiral.

Q. What is your position on the Admiral?

A. Master; I have been master over six years now.

Q. Does she belong to you?

A. No.

Q. Who does she belong to?

A. To Mendig & Co. She used to belong to Peterson.

Q. What did you have in tow?

A. An empty boat with 20,000 brick.

Q. Where did you take her in tow from?

A. From Cavaroc's brick-yard, below the slaughter-house.

Q. How far below the city?

A. From Canal street it is about four and a half miles.

196 Q. What time did you leave Cavaroc's with that boat?

A. At six in the evening.

Q. What speed did you make?

A. It would be pretty hard to tell. I suppose we were making, going down with the boat, about five and a half or six miles. We could go faster if we drove her. Our conclusion was to get down at eleven o'clock.

Q. Did you see the Juniata pass you?

A. Yes, sir; and also the other ship.

Q. What time did the Juniata pass down by you when you were at Cavaroc's yard getting ready?

A. She did not pass me there.

Q. Where did she pass you?

A. Down below McCall's Flats, 28 miles from here.

Q. And you left the brick-yard at 6 o'clock?

A. Yes; but she did not leave at the hour she should have left.

Q. What hour did she leave town?

A. I do not suppose before eight o'clock that night. She did not pass me until I was 28 miles down the river.

197 How far were you above Poverty Point when she passed you?

A. I cannot well judge. But I suppose three miles or three miles and a half. We were right in range to see Poverty Point.

Q. What time was that?

A. I could not give the exact time.

Q. About what time?

A. It must have been somewhere along about eleven o'clock, or half past ten. Somewhere in that neighborhood, I should judge, because I did not go down-stairs to look at the clock until after I got landed; and it was half past one o'clock when I landed at Point La Hache.

Q. How far did you say that was below the city where she passed you?

A. 28 miles—more or less. I think I was a little mite further. I

will not come actually down to half a mile one way or the other, because if you come to that you would have to have a tape-line.

Q. Where were you when you first discovered the Neafie?

A. At Grant's old place; that is 20 miles below the city.

Q. You discovered the Neafie there first?

198 A. That is where I first discovered there was a small tug ahead of me.

Q. How far ahead was she?

A. Then probably from two and a half to two miles; somewhere along in that range.

Q. Did you see them come together?

A. No.

Q. Did you see the Juniata when you saw the Neafie lying at the shore?

A. I saw her right ahead of me.

Q. How far?

A. When I rounded the point she was ahead of me a little over a mile.

Q. You did not see her stop?

A. No; she never made no stop. If she made any stop I could have caught her, for she was not so far ahead of me. Two boats going one way have to go right by rapidly to get out of each other's way, except you have something mighty heavy in tow.

Q. Where was your position on your boat?

A. In the pilot-house. I steer her myself, and allow no one

199 else to do so, except when I go to get a cup of coffee.

Q. Were you looking ahead?

A. I looked all around me. I always do when I am at the wheel, because you cannot be too careful in this river with some people.

Q. How far were you, when the two vessels collided, from them?

A. I think I was probably from a mile and a quarter to a mile and a half. I saw the Neafie when she rounded the point, and the other when she rounded the point.

Q. Did you see them after they rounded the point, and before the collision?

A. I saw the Neafie's smoke right plain all the time. The Bradish Johnson drew my attention. She had torch-lights out making a landing at the right-hand bank.

Q. Above or below the place of collision?

A. Above it.

Q. Was it before or at the time of the collision, or about the time?

A. It must have been somewhere about the time of the collision.

Q. She was then above the collision when she made the landing?

200 A. Yes.

Q. She landed on the right bank?

A. Yes, sir.

Q. Are you certain it was the Bradish Johnson?

A. Yes, sir; certain and sure; because the Hensley lay right above her.

Q. Did the Juniata show anything by which you could see her—by which you could recognize her a mile and a half or two miles' distance; was there anything on the Juniata you could see?

A. You can always see a vessel ahead of you that distance.

Q. What could you see of the Juniata?

A. A black loom going ahead of you all the time.

Q. Smoke?

A. No smoke; just the loom of the vessel.

Q. Did you see any lights?

A. Yes, sir.

Q. If you were within a mile and a half when they came in collision, could you not see them when they came together?

A. Could you see them over a point of land when they struck?

201 Q. There was a point of land that prevented you seeing them strike?

A. Yes. I was above that point.

Q. And the collision took place below that point?

A. Yes.

Q. No trees on that point?

A. No.

Q. And you could not see the boats below?

A. I could see the Juniata, but not the Neafie, only her smoke. The Juniata loomed over the point, but the Neafie being small, you could see nothing but her smoke.

Q. Where did you take your boat to?

A. To Point La Hache Court-House.

Q. How far was that below the point of collision?

A. A little over ten miles.

Q. Did you continue on?

A. Yes, and got there at about half past one, made my boat fast and lay there all night.

Q. Did you continue about the same speed from the time you left here until you arrived at your place of destination?

A. Yes, sir.

Q. And you run at about five miles and a half an hour?

202 A. Yes, sir; probably.

Q. Did you stop anywhere on the trip?

A. Not until we got to our destination.

Q. The point where you landed your brick, how far was it below Cavaroc's yard?

A. I cannot figure up the miles. It was about from Cavaroc's to where I landed the barge about thirty-six or thirty-seven miles—somewhere along there.

Q. You reached there at what time of the night?

A. About quarter past one.

Q. Could you see anything of the Juniata that night after the collision?

A. I kept her in sight for a distance. She gained on me all the time. The last I saw of her I was abreast of the Bradish Johnson—at the Woodland place. I saw her then rounding the point on Point La Hache. That was about five miles further down.

Q. Did you hail the Neafie as you passed her?

A. No. Only blew signals as we always do.

203 Q. Did you suppose there was anything the matter when you passed her?

A. No; I did not think there was anything the matter, but the engineer and I made the remarks I have stated.

Q. You did not hail her at all?

A. No.

Q. How near did you get to her before you saw her at the bank?

A. I saw her as plain as could be when I rounded the point. Only she lay over under the point, and it was not my course. I followed my regular course.

Q. You were then about half a mile or three-quarters from her?
A. Yes, sir.
Q. Where was the Juniata then?
A. As near as I could tell, three-quarters of a mile below her.
Q. And the Bradish Johnson was then above the point?
A. Yes; at this plantation, with torches out.
Q. Did you see the Bradish Johnson coming up before she reached this point?
204 A. I saw them all. You could not help seeing them when you blew a whistle for each other.
Q. Where did you blow your whistle for the Bradish Johnson?
A. She blowed her whistle first to cross my bow.
Q. Where was she then?
A. Above the point about two miles. She was going down the river, not coming up; and he blew his whistle to cross my bow. I signalized the other way; he should not run across my bow, but to slow down and go astern of me. He eased up, and went astern, and made his landing astern of me.
Q. Then you passed the Bradish Johnson before you reached the point?
A. Just a few minutes, because it is not over a quarter of a mile from this place to the point.
Q. You are certain the Bradish Johnson was going down that night?
A. Yes, sir.
Q. Was there any other steamer in sight going down?
A. There was another steamer passed me.
205 Q. Passed you where?
A. She passed me somewhere about McCall's.
Q. How far is that from the point?
A. It is about ten miles, or a little over.
Q. Was there any other you saw in that region that night?
A. No other but them two; there was another steamship went down the same night.
Q. That passed you where?
A. A little before the Juniata; I think it was before the Juniata; will not exactly swear whether a little before or after. That was a steamship.
Q. Do you know what steamship it was?
A. No; I could not say.
Q. As you came up to Poverty Point did you see any other steam-vessels, tugs, or ships anywhere near that except the Neafie, Juniata, and Bradish Johnson?
A. No; nothing but the Heuesley, and she laid about three miles above the point.
Q. Was she going down or coming up?
206 A. No; she was made fast to the bank; she had been on a trip, but was tied up; that was her destination; she had come from N. O., and that was as far down as she went.
Q. When did you first find out you were a witness in this case?
A. I thought I was one from the first morning when I heard of the transaction when I came up to town.
Q. What did you do then?
A. I inquired what was the matter with that flat-boat down there, and I was told she was run into and sank, and parties around town said the Juniata run into the Neafie. I said, "My goodness, she must have run into her quick, for I was right under her stern all the time, and she

must not have stopped many minutes to fool with her." I spoke to two or three men. Mr. Pursglove asked me did I know anything about her. I told him what I thought about her.

Q. When did Pursglove ask you if you knew anything about
207 her?

A. You are ahead of me there.

Q. Was it on your return to the city on that occasion?

A. No; I could not see him; he was laid up in bed.

Q. Whom did you see in regard to it?

A. I spoke to several of his employees about it.

Q. Which one of his employees did you speak to?

A. The man that was transacting the business for him on the levee—a sort of a runner—when I met him on the levee one day; and likewise I spoke to Capt. Hopper about it.

Q. You don't recollect when you first spoke to Pursglove about it?

A. No.

Q. How long ago do you suppose it was?

A. About the first of last week. The captain I met a few days previous, and spoke to him about it.

Q. Who else was on your vessel besides yourself?

A. My engineer, Mr. Ferry.

208 Q. Who was on the lookout that night on your vessel?

A. We never carry any lookout at all. The man sits down and reads the paper in the dining-room, and when I want him I give a whistle and he comes out.

Q. Was there any person except yourself on deck taking observations?

A. No; nobody at all.

Q. You were the only person looking out?

A. Yes; except sometimes the engineer would look around forward and say, "Captain, getting along very well," or something like that; and I would pass a couple of words with him, and then he would go back to his place. We have only a small crew; five in number is pretty small.

Q. How high was the fog on the river that night?

A. Not very high.

Q. How high above the surface of the water?

A. I suppose, two or three feet—may be sometimes more, and
209 sometimes none at all.

Q. About the time you reached Poverty Point what fog was there lying there?

A. I did not look to know.

Q. Did you not observe any?

A. No more than some haze, the same I had going along.

Q. Could you see both shores perfectly?

A. Yes, sir.

Q. All along?

A. Yes, sir; I do not believe but I could have taken my night pair of glasses and see a man if he was standing on the bank.

Q. How far was the flat and the Neafie lying from the shore when you saw her?

A. It is little flat where she was. From where the flat lay, some thirty or forty feet to where you could put your feet on dry ground.

Q. What is the character of the shore on that side of the water where the flat is laying?

A. Good, level, sloping bank. Above her about three or four

210 hundred yards it starts into an eddy up to the point, and it is very deep.

Q. What was the depth of the water out towards the middle of the river from the flat, say for fifty or a hundred yards?

A. I suppose there may be forty-five fathom; something right along there, more or less; I could not exactly tell. At one time I could give the depth there, but I did not heave the lead lately down there.

Q. Which direction does the river run where the Neafie and the flat was lying? Just draw the shape of the river as near as you can. Give your own views where the flat was lying.

(Witness draws a plan of the river, or his idea of the shape of the river there.)

Q. What distance is figure 3 on that map from figure 2?

A. Two and a half miles; somewhere about that.

Q. What is the distance from figure 1 to figure 2?

A. That distance is about three-quarters of a mile, as near as
211 I can judge, because making a bee-line from the point to here is as near as you can go. The rule of all steamers is to take the bends and follow the current going down. Figure 1 is Poverty Point; figure 2 is where the flat was run aground.

(Sketch made by witness is offered in evidence, and marked "Exhibit X, Vally.")

Q. From Poverty Point how far could you see down the river?

A. In a bee-line, four and a half *a* miles.

Q. There was no vessel below there except the Juniata and the Neafie?

A. Yes, sir; when I turned the point the Juniata was about figure 4.

Q. What is that distance below the point?

A. I judge about a mile and three-quarters. The river runs from figure 1 towards figure 3.

Redirect:

Q. You say you could see the Juniata when she turned the point?

A. Yes, sir; could see her over the land, she being so much
212 higher than the Neafie. You could not see the Neafie so plain, she being a lower boat.

Q. When she turned the point, could you tell which bank she was running along?

A. She was running along, as well as I could judge, from the point to the opposite shore—to the right-hand bank of the river. She did not seem to go around with the line of the point, but went around the point and went to the opposite shore, to Wilkinson's Trees.

Q. Where did she go after that?

A. There is where I lost sight, paying attention to the Johnson making a landing. The last I saw of her she had gone across to the opposite shore by the willows at Wilkinson's plantation, and then I lost sight of her, and do not know where she struck a bee-line towards the left-hand shore. I did not see her then.

(Signed) CHRIS. VALLY.

APRIL 24, 1872.

Capt. HOPPER recalled for the libellant, Geo. Pursglove.

213 Q. From what time did you keep the account of the gross earnings of this boat?

A. From December, 1st, 1870, until last month, April, 1872.

Q. State, if you please, the gross earnings of the tug during that time.

(Witness produces the statement called for, and it is offered in evidence.)

Q. Is that correct?

A. It is.

Q. Is it taken from the books?

A. Yes.

Q. And the entries were made contemporaneously with the earnings?

A. Yes.

(Signed) HOPPER.

MAY 30TH, 1872.

Testimony of GEO. M. PHILLIPS, sworn and examined for claimant.

Q. What is your occupation?

A. Pilot or captain either. I am a licensed pilot from the Government, and have also a branch from the State.

Q. How long have you been acting as pilot?

A. Since 1848.

214 Q. Towing vessels up and down the Mississippi River from New Orleans?

A. To sea.

Q. In what capacity were you engaged on the 10th of February last?

A. Pilot on the steamship Juniata.

Q. You were pilot on her on that trip from New Orleans to the Gulf?

A. Yes, sir.

Q. What time did the steamship Juniata leave New Orleans?

A. We left on the 10th of February, about half past seven o'clock; went down stream.

Q. You continued on that route?

A. Until we got to Poverty Point.

Q. Poverty Point is on what bank of the river?

A. On the left bank.

Q. After passing Poverty Point what course did you pursue?

A. East-southeast course, keeping down on the right bank of the river; the proper place, descending.

215 Q. What did you perceive shortly after descending Poverty Point?

A. The smoke, in the first place; I discovered the smoke near the middle of the river, I supposed.

Q. How far distant did that appear to you at the time?

A. I suppose about ten or twelve hundred yards, as near as I could judge.

Q. Could you tell what it was?

A. No, sir; I could not tell; could see no lights at all.

Q. Why could not you see any lights; was it from the condition of the night, darkness of the night, or from any fog on the river, or was it because there were no lights on the object?

A. There was a little fog on the river; a low fog. The left bank of the river was quite clear; could see the shore, going down; there was no fog on the left bank; the fog was from the middle of the river to the right bank; still I could see the right bank.

Q. What then occurred?

A. The next thing occurred, I heard one whistle blown. I im-

216 mediately answered the one whistle—keep to the right.

Q. Were you within the usual signaling distance at that time, or were you outside of the signaling distance at that time?

A. The usual signaling distance.

Q. What did you do with the helm?

A. Put it aport, and kept her close on the right bank.

Q. Where were you at the time when you first discovered this smoke?

A. In the pilot-house at that time.

Q. It was about what hour?

A. Near half past ten o'clock.

Q. When did you first begin to apprehend there would be a collision?

A. After the signal was blown, the mate comes out and asked me what that was. I told him it was a steamer of some kind, blowing one whistle to keep to the right. Then the mate got up on a rail and said, "She is nearing us."

Q. What order did you give?

217 A. I went out myself and got up on the rail and saw her green light (referring to the Neafie) and red light heading for us. I immediately had the helm put hard aport, stopped the engine', and reversed them. No white lights were on her or on the barge.

Q. How near were they then to you?

A. Well, I should think they were about three hundred yards. Then the mate says again "She is coming for us," and so she was. Just before she struck us I sung out and asked them where they were going, and when she did strike us she hit just aft the fore-rigging, *and when she did strike us she hit just aft the fore-rigging*, and when she did strike us she was heading about south or south by west—heading for the right bank, across the river. If it had not been for the Juniata she would have run ashore on the right bank of the river. After she struck us I immediately had the helm put hard on the starboard, to keep the ship from running into the right bank of the

218 river. After the boat struck us she swung right alongside of us. (Witness shows with his hand what he means.)

Q. About what angle was she coming in?

A. I suppose about a point or two points, with the Juniata's bow near' across the river, by the right bank of the river. The river there runs east-southeast.

Q. How many degrees was she running towards you?

A. I saw about two points of the compass heading about southwest or south by west when she struck us. After she swung alongside of us we lay a-drifting about ten or fifteen minutes. There were no signals or nothing, nor any assistance at all. At the same time she was towing a flat-boat over to the left bank of the river—towed it ashore.

Q. How near was the Juniata to the right bank when the collision occurred?

A. As near as I could judge, she was about three or four hundred feet.

Q. Was the right bank clearly visible there?

A. Yes, sir.

219 Q. What answer, or was there any, given when you hailed the Neafie with the question "Where are you going to?"

A. There was no response at all.

Q. At what rate of speed was the steamship Juniata going at the time of collision?

A. She was going about three or four knots an hour, good steerage-way only. The steamship had been stopped for some time before the Neafie struck us.

Q. What slackening, or was any slackening, on the part of the steam-tug?

A. I should think not, as she struck us pretty hard; if we had not been a pretty strong vessel she would have knocked a hole in us.

Q. What lights did the steamship have on?

A. She had a green, red, and white light.

Q. In the proper place, were they?

A. White light at the mast-head, green light on the starboard side, red light on the port side of the ship.

220 Q. What bells did you hear on the steam-tug Neafie?

A. I did not hear any.

Q. Here is a map which was offered by the libellant, marked "B." Now indicate as near as you can the course of the Juniata and the course of the Neafie. Examine the map & see if it be a correct one.

A. That map of the river below Poverty Point is not correct. The river runs there east-southeast. The collision occurred abreast of Wilkinson's plantation, near the right bank, and almost directly opposite from a little whiskey-shop recently built on the left bank of the river.

Q. And I understood you to say it was near this house that they towed the flat-boat, where she sunk?

A. Yes; they towed the flat-boat, after the collision, across the river in just below that house, (to the little house he referred to before, and meant to be designated on the map B as on the left bank.)

Q. Is Wilkinson's house opposite the point?

221 A. Wilkinson's house is about opposite the little house referred to, Wilkinson's being on the right bank.

Q. At the time you discovered this smoke I think you said the Juniata was in the middle of the river?

A. Nearer the right bank.

Q. If the Juniata had continued her course as she was at that time running, and the Neafie had continued either straight up or straight down the river, would there have been any collision?

A. No, sir; there would not.

Q. Did you see any light on the Neafie before she blew her whistle, or after?

A. Afterwards. And there was no other steamer coming or going, when this occurred, in that part of the river; none for miles, that I know of; I did not see none nowhere.

Q. What was there to indicate which direction the Neafie was going, in the way of lights or otherwise, until she blew her whistle?

A. We could see no lights at all.

222 Cross-examined:

Q. What time, sir, did the Juniata leave New Orleans?

A. She left, head down stream, about half past seven o'clock on February 10th, 1872.

Q. Had not the Neafie been alongside of you that afternoon?

A. Not that I know of; I had no use for her. I never go down to the ship until near the hour we start. I go aboard and we get under way.

Q. When did you go aboard?

A. I do not remember now. Just a little before sundown, between four & six o'clock.

Q. Do you live in town?

A. Yes, sir; I have lived here for thirty years.

Q. Do you remember whether you went from your domicile on the steamer?

A. I did.

Q. Were you aware that the Neafie with a flat-boat in tow was in the river?

A. No, sir; I was not.

Q. What day of the week was it?

A. I believe it was Saturday evening; the almanac will tell that.

223 Q. What lower-coast packets were in the river that night?

A. You cannot tell them. I met one before we got to Poverty Point—a side-wheel boat; I do not know whether the Henseley or the Bradish Johnson, or what.

Q. Is not it a fact that that was the day for the Henesley and the Bradish Johnson?

A. I do not know; I did not take any run of their leaving or coming at all. All I want to do is to keep clear of them in the river.

Q. Was not the Rosalie Judson in the lower river that night?

A. I do not know. I passed one tug-boat with a flat-boat before we got to Poverty Point, going down. She had the proper lights up, too. I blew my signal to go to the right, and she answered it there and then.

Q. Was not the General Sherman in the river that night?

A. She was ahead of us, but I passed her before we got to Pilot Station, Southwest Pass.

Q. Were you on board the Juniata when the Sherman started?

A. I believe I was.

224 Q. How long did it take you to make the run to Poverty Point?

A. About three hours.

Q. What is the distance to Poverty Point?

A. Thirty-four miles; some call it thirty-three miles.

Q. There was some fog that night?

A. A little fog from the middle of the river to the right bank, where the collision occurred. It was clearer on the left hand.

Q. Was the fog thickest in the bends of the river?

A. Yes; it was at that time. It was biggest on the right bank. That was in the bend above Wilkinson's plantation and abreast of it, too. It was a low fog. On the left bank it was clear, and I could see the left bank very plain.

Q. How close in to the right bank do you think you ran your ship on doubling Poverty Point?

A. Nearly one-third of the way from the shore opposite the point—that is one-third of the way from the right bank.

Q. Could you see the right bank?

A. Yes, sir.

225 Q. I presume you saw it by glimpses only?

A. No; I could see it plain all along. I could see this plantation, the trees, sugar-house, and houses, all quite plain, for I was close to it.

Q. How long a stretch ahead could you see the left bank?

A. For a mile and a half. I could see it down as far as Wederstraindt's plantation.

Q. How far is Wederstraindt's plantation below Poverty Point?

A. About four miles. I could see along down to the end of his plantation. Down to his house is about four miles from the point.

Q. Was the middle of the river entirely free from fog?

A. There was a little bit from the middle of the river to the right bank where the collision occurred, a low fog.

Q. Then it was a fair night for running?

A. It was no trouble for me to run that night at all.

Q. You say that you saw the red and green lights on the Neafie?

226 A. I saw the green first, and the red next, but no white light.

Q. How do you account for the fact that you saw no white light on the Neafie?

A. Because she did not have any; that is the only way I know. She did not have no white light visible at all, either on the barge or on the Neafie.

Q. When did you become aware that the Neafie had a flat-boat in tow?

A. When she struck us, or was about to strike us, I saw she had something in tow.

Q. How was the flat fastened to her—in what position?

A. Alongside of her, on the port side of the Neafie.

Q. In what position was it fastened?

A. That I do not know; with lines or ropes, I suppose.

Q. I know that very well. What I want to ascertain is the relative position of the two boats. Was the bow of the flat-boat on a line with the bow of the Neafie?

A. I suppose she was hung on pretty well aft on the flat-boat,
227 if there is any aft, on a boat with two square ends. I suppose she was hung on aft, because they could steer her better.

Q. Are you drawing an inference, or do you speak from recollection where it was? You say you suppose she was hung on aft. Was it really so?

A. I say she had her alongside; in what position I cannot tell, because I did not attend to her. After the Neafie struck us I had to put our helm hard astarboard to keep the Juniata from running into the right bank.

Q. Do you think it was the Neafie struck you, or the flat-boat?

A. I think it was the flat-boat struck first, the bows of the flat-boat—if you can call the square ends in front the bows.

Q. Did you see the effect the collision produced on the flat-boat?

A. Afterwards, as I came up the river, I saw the end that they towed ashore first.

Q. What damage did it do the flat?

A. Damage enough to make it leak and sink. It was there
228 run aground on the bank—one end of the flat-boat; it was covered with boards on top. I see it was run in on shore, the end that was down stream first.

Q. Did I understand you to say you heard the whistle blow before you saw the Neafie, or after; which was it?

A. I heard a whistle blow when I saw her smoke. I could see her smoke, but no lights. When within ten or twelve hundred yards of her she blew one whistle.

Q. Are you prepared to swear it was the Neafie, and not some other boat, that blew that whistle?

A. There was no other boat in the river, at that part of the river, that I know of.

Q. If the Neafie and yourself had been going down the river in the same line, would not it be very possible that you would have seen the red without seeing the white light, the white light being hidden by the smoke-stack?

A. I do not think it would. Going in the same direction, it is hard to
229 see the lights of a vessel going down the same way you are. I never saw the lights until she was coming, heading to us.

Q. I ask you whether it is not possible that the vessel could

have had a white light, and yet you not see it at all, if you had both been descending the river, one directly in front of the other?

A. No; I do not think it could; I do not think we could see the white and the side lights, unless we got off to one side of her or the other.

Q. Is not the Juniata much higher out of the water than the Neafie?

A. Yes, sir; she is.

Q. That being the case, could not you look down and see the green and red lights, if you were directly astern of her?

A. With the stern of her right ahead? No; you could not see the lights then.

Q. You being a great deal higher than her, could you not see them?

A. No; I never saw the lights until she was heading for us; then I saw the green and red lights, and no white lights.

230 Q. What do you think is the width of the river where this collision occurred?

A. I think about three-quarters of a mile.

Q. Then it is your opinion that the collision occurred very near Wilkinson's plantation, on the right bank?

A. Yes, sir; near abreast of Wilkinson's plantation.

Q. Was not that flat-boat badly hurt by the collision?

Q. I do not know; I did not examine it. When I came up the river again I saw she was stove in forward, one end of her, where the Neafie had run into the Juniata's side.

Q. Did you see her strike?

A. Yes, sir.

Q. Did you hear any crash?

A. Yes, sir.

Q. Did it jar your ship?

A. Not much.

Q. You think, then, that that flat-boat, injured as it was, was towed all the way from the right bank to the little house on the left bank, across the river?

A. I saw her towing her over.

231 Q. You think, in the condition in which the flat-boat was, that it was taken from the right bank, where the collision happened, according to your statement, to the little house on the other bank of the river?

A. Yes, sir; I saw her being towed there, with a glass, while we were laying drifting.

Q. How long do you think you staid together after the collision?

A. After she struck us she swung alongside and went right astern, two or three minutes.

Q. Was the Neafie heading down stream when she dropped astern?

A She was heading south by west when she hit the Juniata's side, and after she hit us she swung alongside and dropped astern.

Q. Did she hurt you?

A. No; I examined, but she did not hurt us. If the Juniata had been a weak boat it would have sunk her.

Q. Are you willing to swear that there was no light on the flat-boat that night?

232 A. Yes, sir; and also that I saw no white light on the Neafie or on the flat-boat.

Q. How do you account for the fact that, instead of towing the flat-

boat which was struck so that it sunk to the nearer bank on the right, *that* it was towed over to the other side?

A. Because, I suppose, there was shallow water over there to save it. Here, on the right bank, it is deep water; you can go right alongside the bank; on the other side it is a little shallow—little flats.

Q. You do not know what was on the flat-boat?

A. I do not.

Q. Do you think it would have been practical to tow any flat-boat, loaded with cement, across the river, after it had been struck in the way that was?

A. I do think so; yes, sir. They towed it over there to try to save her. I saw them towing her over and run her onto the shore below that house.

Q. You said she dropped astern?

A. Yes, sir; and we could see her towing this flat-boat across and run her ashore.

233 Q. What did you do on the Juniata after the collision; what did the Juniata do?

A. Put the helm hard astarboard, to keep her from running into the right bank of the river.

Q. Did you keep on your course down the river?

A. No; we lay there drifting for fifteen minutes, to see if there were any signals given. There was none at all; but we see her towing the flat-boat ashore on the left bank. Then we proceeded down the river.

Q. And did you watch her the whole way as she towed it across?

A. Yes, sir.

Q. What part of the ship were you in?

A. Forward, by the pilot-house.

Q. And you watched her?

A. Yes, sir; I was upon the rigging at the time.

Q. What part of the river had the Juniata reached when you perceived that the Neafie had got to the little house on the left bank with the flat, where the flat sunk?

234 A. Not over half a mile below the house, where there is no current in the river. The ship was stopped—lay drifting; the engine was not going at all.

Q. How could you distinguish that it was the Neafie? Did you see her lights?

A. I did not know it was the Neafie until they made complaint against the ship.

Q. How do you know it was the Neafie that was there at the small house? You say you saw her crossing over from where the collision occurred?

A. Yes, sir.

Q. From your position, half a mile below, how could you see that?

A. I was not half a mile; I said we were laying drifting.

Q. How could you tell it was the Neafie; could you see her?

A. Yes, sir; it was clear at that shore—no fog. I had a good glass.

Q. What could you see; her lights?

A. Her red and green, no white lights.

235 Q. What did your vessel do after that?

A. Proceeded on down the river.

Q. What time did you leave the pilot-house? You said you left the pilot-house at a certain part of this trip and went outside?

A. When the mate said she was coming for us, nearing us, I went

out and I saw she was coming for us; I saw the green and red lights, and I saw she was coming for us, and I ordered the helm to be put hard a-port, and stopped and backed the engine.

Q. What was your position there in the river—what was the position of your boat when you perceived this tug coming onto you?

A. My position was keeping down on the right bank of the river.

Q. Whereabouts were you on the right bank?

A. Before the collision occurred, at the time the whistle was blown, we were above Wilkinson's plantation, coming down close along on the right bank, when she came across. Our position was east-southeast down the river when we got abreast of Wilkinson's plantation. The
236 quartermaster was at the wheel.

Q. The track you were pursuing, is that the usual track of descending vessels?

A. Yes, sir.

Q. And you could see down to Wederstrandt's plantation?

A. I could see the upper part of it.

Q. How happened it that you never saw the Neafie until she was as close on as you describe her, since you could see so far down the river as the upper part of Wederstrandt's plantation?

A. I saw her smoke, but saw no lights.

Q. How do you account for it that you could see no lights?

A. She is so low in the water, and was forward of us.

Q. How happened it, since you could see so well and so far down the river, that you did not see her smoke before?

A. The Neafie being so low in the water, and there being fog.

Q. But the smoke raises above the fog in a column?

237 A. It depends altogether on the wind. There was very little fog that night—a little low fog, and very little wind. What wind there was was off the east shore, which made that bank a little clearer than what the right bank was.

Q. The Neafie, then, was ascending the river?

A. I do not know whether she was or not. She blew one whistle to keep to the right; I thought she was coming up, and I answered one whistle.

Q. Was she ascending or descending. You say you saw her from a considerable distance?

A. I said I saw her smoke. I could not tell which way she was coming. When she blew the whistle I thought she was coming up.

Q. But you saw herself?

A. Yes, when she was coming ahead into us, about three or four hundred yards; when I discovered her lights coming heading for us.

Q. Did you blow any signals on your boat?

238 A. One to keep to the right answered the Neafie's whistle; one whistle.

Q. Who caused that signal to be blown?

A. I did.

Q. Did you give an order to that effect; and, if so, to whom?

A. I blowed the whistle myself.

Q. Then did you go back to the pilot-house to blow?

A. I was in the pilot-house, where the string is that leads to the whistle.

Q. I understood you to say you left the pilot-house and went out on the rail?

A. That was at the time the mate said she was coming for us. I had blowed the whistle before that. The whistle was blown before I went ut of the pilot-house to the rail.

Q. Then you blew the whistle before you saw her, because the mate told you he saw her?

A. I blew to answer her whistle. She blew one first, and I answered her.

Q. Then I understand that you blew your whistle before you saw her?

A. I saw her smoke.

239 Q. Then I understand that you saw the smoke from your place in the pilot-house?

A. Certainly, sir.

Q. And then you blew the whistle and went out?

A. I blew the whistle after he blew. I answered his one, and went out on the rail, and then saw her coming—saw her green and red-lights heading right for us.

Q. What is the mate's name?

A. Colton.

Q. Where did the mate stand?

A. On the port side of the ship, nearly abreast of the pilot-house.

Q. Where was the quartermaster?

A. At the wheel.

Q. Do not you think you may be in error, and that this collision may have happened on the left bank of the river, and not on the right bank?

A. No, I am not; I am telling the truth every word I am speaking; it was just as I have stated.

Q. Do not you recollect seeing a man on the flat-boat with a white light?

A. No, I did not see none at all.

240 Q. Have you ever piloted the Juniata before?

A. Yes, sir; a great many times and since; I brought her up last Wednesday evening, and I am going to take her down Saturday night.

Q. How many times has she been arrested on admiralty process while you were piloting her?

A. Once before a lugger ran into us. She had no lights up, and it was a dark night.

Q. Who was in command of the Juniata on the night of this collision with the Neafie?

A Captain Hoxie.

Q. Was not he in command the night she ran into the lugger?

A. No; Mr. Colton was.

Q. Mr. Colton was on board of her at the time of the collision with the Neafie?

A. Yes, sir; he was mate.

Q. Is Captain Hoxie in command of her now?

A. No; he has quit her.

Q. Has not he been relieved?

A. I do not know anything about that; it is none of my business.

241 Q. Is that the only time she has been arrested, to your knowledge, on admiralty process?

A. No; she had a collision outside the bar with a tug-boat. That is a long time ago, and I had forgotten all about it. There was a bar-pilot on board of her.

Q. Was Captain Hoxie then on board of her?

A. Yes, sir.

Q. Did you see the Bradish Johnson in the river on the night of this collision?

A. Not that I am aware of; I saw one side-wheel boat, but what it was I did not know. We passed signals and I passed on. It was above

Poverty Point I passed her. I do not say it was the Johnson. I say it was one of the packet-boats.

Q. Did not you pass another below Poverty Point?

A. No; I do not believe I did. I did not pass anything until I passed the Sherman down at Wilder's Flat.

Q. Did not you see a boat below Poverty Point burning pine torches that night?

A. No, I did not.

242 Q. Maybe there was another pilot and you was relieved?

A. No.

Q. You did not see it?

A. Not that I remember. Not anywhere near Poverty Point anyhow.

Q. Did you see her at all that night?

A. Not that I remember.

Q. Did you see the Rosalie Judson that night?

A. I do not know whether I did or not. Boats pass us, and we do not know the names of them; as long as I keep clear of them coming up and down the river, that is all I ask. I do not stop to read the names of boats; I do not care anything about them, but go on about my own business.

Q. You do remember seeing the Sherman?

A. I saw her when she left and when I passed her at Wilder's Flat, about ten miles below the head of the passes. She rounded to, and was headed up when I passed her, and after I passed she turned around after me and went on down.

243 Q. What stage was the water when this collision occurred?

A. Very low, and no current.

Q. When the river is very low and no current, how deep is the water at Wilkinson's plantation?

A. How far from the shore?

Q. Fifty yards?

A. Twelve or fifteen fathoms of water.

Q. Ten yards from the shore?

A. It is pretty deep too. You can put a ship right up alongside the bank at his place.

Q. At that stage of the water opposite where this collision occurred, what is the depth of the water right up against the bank?

A. You can put a ship right up alongside of it. Eighteen feet of water. It is a bold bank all along this right shore there. Where the flat was run ashore on the left bank is shallow, but on the right bank, all along there, is deep water.

(Signed) GEO. M. PHILLIPS.

MAY 3RD, 1872.

244 Testimony of WM. L. SIMPSON, sworn & examined for claimant, says:

I am first assistant engineer of the Juniata.

Q. How long have you been on the Juniata?

A. I have been on her since the 12th of July, 1869; that will be three years this July coming.

Q. Were you on her at the time of the collision with the Neafie?

A. I was.

Q. Were you on watch at the time?

A. I was.

Q. Who else was on duty with you?

A. I was the only licensed man on watch. There were two firemen down below in the engine-room, and one coal-passer; and I had one man with me as oiler; to oil the engine and do any other work necessary to be done.

Q. Was the full complement on watch at the time?

A. Yes, sir.

Q. Do you recollect anything about this collision with the Neafie?

A. I never knew anything at all about it until the bells wer
245 rung to stop her. When I went up on deck I could not see anything. I run up suddenly to see what was the matter after I heard the bells to go ahead again, and I would not know anything of it, except hearing somebody say that we run into a boat, and somebody was thrown overboard; that was all I knew about it.

Q. There was no heavy shock at all?

A. No shock whatever to be felt in the engine-room.

Q. What orders were given to you that you reccollect of?

A. The only orders I got were two bells—to stop her immediately—which was answered about as quickley as could be done. We were running at very slow speed at the time. We cannot run down this river very fast. We never can run down the Mississippi fast, for the simple reason that the water is so bad that our boilers get priming and foaming on that muddy water; if run at our regular speed, it would carry it in to her cylinder and stop her; but she is going pretty fast
246 enough when she is running slow down the river.

Q. As soon as the order was given to stop her, you did so.

A. Yes, sir; I was just laying my hands on the throttle at the time.

Q. Do you reccollect was there any order given to back?

A. No; I have no reccollection of any order having been given to back.

Q. How long after you stopped was it before you went ahead again?

A. I do not definitely recollect what the time was.

Q. When you came up on deck, how long did you remain?

A. I just came up on deck, took a look out, inquired what was the matter, and run right back. It is always my watch going down the river at night, I am on watch from eight to twelve o'clock, and always make it a practice to be in the engine-room all the time, on account of accidents, or anything like that; because we have to be so careful coming up and going down the river. We have adopted as a rule
247 that one man be there all the while; if I go below, the man on watch with me is there.

Q. You reccollect on that occasion you obeyed all the orders given to you as engineer?

A. Yes, sir.

Q. What is the length of the Juniata?

A. I cannot tell exactly, but I should judge about two hundred and fifty or two hundred and sixty feet long.

Q. What depth of water did she draw when she was going out that evening?

A. That I could not tell.

Q. When loaded what is her draft?

A. About sixteen and a half feet of water.

Q. How was she loaded that evening?

A. That I could not tell you.

Q. How was she officered, manned, and equipped for that voyage?

A. She had her full complement throughout. We must have the full

complement in our department, for we cannot spare one man. If one man gets sick, we have to put that work on somebody else, and make somebody else work that much longer.

248 Q. The full complement in the engine department were on duty at the time of the collision?

A. Yes, sir.

Q. And from the time you left port?

A. Yes, sir.

Cross-examined:

Q. When you came up on deck, did you come up on the starboard or on the port side?

A. On the port side.

Q. Could you see the opposite bank of the river?

A. I could see something that looked like the bank, but it was pretty dark, and it was very dark to me coming out of the light, so I could scarcely see anything. I did not attempt to see anything.

Q. You came up on the port side. If you saw the bank when you came up on the port side, what bank of the river must it have been?

A. The left bank; but I could not be positive about that, for any dark object would like a bank.

Q. Was not the Juniata constructed for the Navy?

249 A. She was not constructed for the Navy. She was built to run from Boston to Charleston, in the merchant service, about the breaking out of the war, and the United States Government bought her and her sister ship as transports for the United States Navy.

Q. You said that, although you could not go at full speed when descending the river, owing to the muddy water, that she was going fast enough. What do you mean by that? How rapidly do you suppose she was descending the river that evening?

A. With the current & all, I suppose she might have been going nine or ten miles an hour.

Q. When you said you was the only licensed officer on duty, explain what you mean.

A. There are three licensed men who are supposed to take the responsibility, and the watches are divided between the three, and I was one of the three. I am supposed to be on duty from eight to twelve

250 o'clock, but on leaving port I always take the chief engineer's duty, and that leaves me on duty from the time we leave port until my time is up.

Q. Have you a clock in the engine room?

A. Yes, sir.

Q. How long after leaving Jackson Square did this accident occur?

A. I cannot tell that exactly either. I think it was in the neighborhood of nine o'clock, somewhere about that, when the accident happened. The great object, whenever the bell rings, is to get done what is wanted as quickly as possible, and that takes your attention from everything else.

Q. I do not expect you to tell exactly, but approximate, how long it was after the bell rung to slow the engine when the bell rung to go ahead again.

A. I got two bells as quick as a man could pull them; that is to stop her. One is to slow and the other is to stop. Then it must have been four or five minutes—I hardly think that long, but between three and five minutes—when I got a bell to go ahead again.

251 Q. Was there any other stop made after you got your bell to stop?

A. No; not at that time.
Q. Was there any other bell rung that evening to stop?
A. After we got down near the mouth of the river, or in the morning, some bells rung then after I had got off watch.
Q. How many hours after?
A. Four or five hours after.
Q. None in the meanwhile?
A. No.

Redirect:

Q. Did you go on deck after you had answered the stopping-bells?
A. No.
Q. What time did you go on deck?
A. I did not go on deck until I got the bells to go ahead, and everything all right again.
Q. Did you have occasion to take any particular notice as to the time that elapsed between the stopping-bells and the bells to go ahead again?
A. No.
Q. You were not looking at any object?
A. No; I was there prepared to back if necessary. We always
252 make that calculation going down the river, where there is any likelihood of danger, to be prepared to back.
Q. You did not have any occasion to count the time that elapsed between the stopping and going ahead again?
A. No.
Q. When you came out of the light from below right up on the deck, did not it disqualify you from seeing objects around?
A. I could scarcely see anything coming up into the dark. The barge or tug-boat might be there for all I know; I could not see.
Q. You did not remain long enough to ascertain what could be seen?
A. No; I heard somebody say there was a boat run into, or something like that. I had no time to stop there, and I went right back to my duty.

(Signed) WM. L. SIMPSON.
MAY 3D, 1872.

Testimony of THOS. THOMPSON, sworn and examined for the claimant, says:

253 I am quartermaster of the Juniata. I was at the wheel of the Juniata at the time of the collision with the Neafie.
Q. Did you have occasion to look out?
A. Yes, sir; I always give my eye ahead every now and then, as long as I am not going by the compass; I always do that.
Q. What kind of a night was it?
A. I could see both banks of the river.
Q. What part of the river was the Juniata at the time of the collision?
A. About the middle of the river.
Q. How close was the tug to you before you first discovered her, or how was your attention first called to it?
A. By a whistle.
Q. How far off was she then?
A. She was pretty considerable distance off; two or three hundred yards.
Q. What was that whistle?
A. One whistle, and then the pilot took hold of the bell-wire and blew one whistle to answer her.

complement in our department, for we cannot spare one man. If one man gets sick, we have to put that work on somebody else, and make somebody else work that much longer.

248 Q. The full complement in the engine department were on duty at the time of the collision?

A. Yes, sir.

Q. And from the time you left port?

A. Yes, sir.

Cross-examined:

Q. When you came up on deck, did you come up on the starboard or on the port side?

A. On the port side.

Q. Could you see the opposite bank of the river?

A. I could see something that looked like the bank, but it was pretty dark, and it was very dark to me coming out of the light, so I could scarcely see anything. I did not attempt to see anything.

Q. You came up on the port side. If you saw the bank when you came up on the port side, what bank of the river must it have been?

A. The left bank; but I could not be positive about that, for any dark object would like a bank.

Q. Was not the Juniata constructed for the Navy?

249 A. She was not constructed for the Navy. She was built to run from Boston to Charleston, in the merchant service, about the breaking out of the war, and the United States Government bought her and her sister ship as transports for the United States Navy.

Q. You said that, although you could not go at full speed when descending the river, owing to the muddy water, that she was going fast enough. What do you mean by that? How rapidly do you suppose she was descending the river that evening?

A. With the current & all, I suppose she might have been going nine or ten miles an hour.

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A. No; I was there prepared to back if necessary. We always
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Q. You did not have any occasion to count the time that elapsed between the stopping and going ahead again?
A. No.
Q. When you came out of the light from below right up on the deck, did not it disqualify you from seeing objects around?
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MAY 3D, 1872.

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Q. What kind of a night was it?
A. I could see both banks of the river.
Q. What part of the river was the Juniata at the time of the collision?
A. About the middle of the river.
Q. How close was the tug to you before you first discovered her, or how was your attention first called to it?
A. By a whistle.
Q. How far off was she then?
A. She was pretty considerable distance off; two or three hundred yards.
Q. What was that whistle?
A. One whistle, and then the pilot took hold of the bell-wire and blew one whistle to answer her.

254 Q. Could you tell which way she was running when she blew that one whistle?

A. No; I could not tell which way she was running, because I did not see any lights.

Q. What way did that whistle indicate she was running?

A. I thought she was coming up.

Q. Did the Juniata answer that signal and port her helm accordingly?

A. Yes, sir; put it hard aport. The pilot gave me a hand.

Q. How long after that was it the collision occurred?

A. Five or six minutes.

Q. During the time your helm was aport, did the Juniata approach any nearer to the right shore?

A. Yes, sir.

Q. How soon after this was it that you discovered that the Neafie was not coming up, but was about running into you after the pilot pulled the wire to blow the whistle?

A. I suppose about six minutes.

Q. How was the Juniata manned on that occasion—officers and equipments?

255 A. There was a man on the lookout. The mate was on the port side, on the luff of the bow, and the pilot was there, and I was in the wheel-house. I do not know where the other two men belonging to the watch were.

Q. Who were those that belonged to the watch?

A. Mr. Colton and John Smith.

Q. Who was on the lookout?

A. A man named John Smith.

Q. Whereabouts was that lookout situated?

A. Right forward, as far as he could go.

Q. Who were the other two belonging to that watch that you did not know where they were?

A. James McDevit, whose duty on that watch was before the mast. I do not remember the name of the other man.

Q. What was duty in the watch?

A. It was the same.

Q. Was their duty on deck or below?

A. On deck, and sometimes below, when working through the day; on watch they are continually walking the forecastle-head.

256 Q. What was the duty of these two men?

A. They were seamen.

Q. All the men necessary and ever carried on these vessels to lookout were all at their posts?

A. Yes, sir; all at their posts.

Q. Did you see the Neafie after the collision?

A. No; I did not go out of the pilot-house; I saw her when she struck us, but I did not see her after.

Q. Was the vessel stopped; and, if so, how long?

A. I suppose our ship was stopped seven or eight minutes to see if they made any signals for fear that they were damaged.

Q. Stopped to see if any signals were made by the Neafie?

A. Yes, sir.

Q. Stopped to give them assistance if they needed it?

A. Yes, sir; then I heard somebody halloa out that she made for the bank of the river, and shortly after that we went ahead.

Q. Do you know who halloa'd out that she made for the bank of the river?

257 A. No; everybody was on deck after she struck us.

Q. When you say you think you were in the middle of the river are you certain of that?

A. Yes, sir.

Q. That is your recollection of it?

A. Yes, sir.

Q. How long have you been running up and down this river?

A. Thirteen months.

Q. Can you see as well out of the pilot-house as to the exact position you were in the river as if you were on deck?

A. Better from where I was; because I was standing about three feet higher up than the deck.

Q. Where was Mr. Phillips, the pilot?

A. He was in the pilot-house; but before the tug struck us he ran out and hallo'ed out to them, "Where the hell were they going to."

Q. Halloed out to the tug where the hell she was going to?

A. Yes, sir.

Q. How did the tug come into you?

(Witness shows very nearly at a right rangle.)

258 Q. Where did she strike the Juniata?

A. At the fore-rigging.

Q. Did you notice how the flat was lashed to the Neafie?

A. I could not see that.

Q. Did you see any light on the flat?

A. No.

Q. Did you see a white light at all?

A. No.

Q. What was the proper position of the Juniata in the river going down the river that night?

A. I do not know exactly which way she was heading; I did not look into the compass.

Q. Was she running in the usual track for descending vessels?

A. Yes, sir; in the usual way I see them coming up and down.

Cross-examined:

Q. What is the duty of the quartermaster?

A. The duty is to attend to his position, in the first place; he has got to steer and nothing else.

Q. Then you were steering at the time of collision?

A. Yes, sir; and in the pilot-house.

259 Q. Where is the pilot-house situated?

A. Right forwards, as far nearly as it could be—a little abaft the foremast, merely the breadth of the hatch back.

Q. Where was Phillips, the pilot?

A. He was in and out of the pilot-house, and forward looking out. Sometimes he went out, and, if he saw anything, came back again.

Q. Was he not very much excited that night?

A. No; I could not say he was excited.

Q. And you did hear him say, "Where the hell are you fellows going?'

A. "Where the hell are you coming?" that was after the whistle.

Q. Who first saw the smoke of the Neafie?

A. I suppose the man on the lookout; he hallooed out to the pilot. I was at the wheel.

Q. Where was the pilot at that time?

A. Before the pilot-house—outside the pilot-house. He went out of the door as soon as he hallo'ed out.

260 Q. He was not in the pilot-house?
A. He was in the pilot-house and went out.
Q. Then you say you heard the whistle?
A. The whistle was heard before he went out.
Q. Was the whistle heard before you saw the smoke?
A. I did not see the smoke. I did not see any smoke—not me. I heard the whistle, though, and our whistle replied to it.
Q. Who gave the signal for your whistle?
A. The pilot himself.
Q. He stepped back into the pilot-house and gave the whistle?
A. Yes, sir.
Q. Did you keep a good lookout?
A. Yes, sir.
Q. Saw no smoke?
A. No
Q. Saw no boat?
A. No.
Q. Heard no whistle?
A. I did hear the whistle.
Q. How far out of the pilot-house did Phillips go?
A. To the fore-rigging.
261 Q. And then he came back and pulled the bell?
A. He pulled the bell before he went there.
Q. Did he pull the bell before he saw the smoke?
A. I do not know; I did not see the smoke.
Q. On the lookout?
Q. Were you trying your best to see everything?
A. Yes, sir; certainly.
Q. On the lookout?
A. I was not on the lookout. I was watching everything the pilot said to me. If he said port, I did it; and if he said starboard, I did it.
Q. At the time you heard that whistle, how was your helm?
A. She carries a starboard helm. Then our helm, if anything, was about midships. We were going about straight.
Q. Could you see both banks of the river?
A. Yes, sir.
Q. Could you see the left bank of the river well?
A. Yes, sir; I could see it out of the pilot-house; the windows on each side was open.
262 Q. I think you said you thought you were in the middle of the river?
A. We were in the middle of the river, as near as I could say.
Q. Then it is not true that you were close to the right bank?
A. I could not say that she was close to the right bank.
Q. She was not close to the right bank?
A. We were about as near the middle of the river as I could say.
Q. How wide do you take the river to be in that place?
A. I could not tell. I never came up in daylight.
Q. Can you swear it was the Neafie blew that whistle?
A. I did not see no other tug-boat.
Q. Can you swear that it was the Neafie blew that whistle?
A. I swear there was no other boat to be seen by me.
Q. Did you pass any other boats that evening about that time?
A. No; not about that time.
Q. A little before did you pass any?
A. I do not think we did.

263 Q. You did a little after, did not you?
A. I did not see them.
Q. About the time of the collision, did not you see one of the coast packets landing at the plantation, with torches out burning?
A. No; I did not see one. I saw but the one, until my watch was out.
Q. What one did you see?
A. But that one boat, and I did not know what her name was.
Q. How fast was your ship going?
A. I could not say how fast; I suppose betwixt seven and eight, or I think about eight miles an hour.
Q. Did you see the house that stands on the left bank?
A. No, I did not see no house. I was not looking much to the bank for houses. I was keeping my eyes ahead.
Q. Could you see which way the Neafie went after the collision?
A. No; because she was astern of us.
264 Q. Were not you both going down the river?
A. Yes, sir; but I was in the pilot-house and could not go out and see which way she went.
Q. But you were faster than she was?
A. I guess we were.
Q. Did you see the Neafie alongside of the Juniata at Jackson Square before she left on her downward trip?
A. I saw a tug-boat there with a flat, but I did not take any notice what boat it was. I did not see the tug start down the river. I do not remember it. I am on one day and off the other when laying in port.
Q. Where did the pilot stand when he said, "What the hell are you fellows doing?"
A. At the fore-rigging, on the port side of the ship.
Q. On which side of the ship was it that the collision occurred?
A. On the port side.
Q. On which side did Phillips, the pilot, stand?
265 A. On the port side.
Q. When the Neafie and flat got alongside of you, did you see them?
A. No; I saw them as they went past the house; that was all.
Q. Did you see the white light on the Neafie?
A. No; I did not see a light at all.
Q. What did you see?
A. The pilot-house as she struck and went along the ship's side.
Q. Was she much lower than you?
A. Yes; you had to look over the rail before you could see the tug-boat itself. I heard Colton say there was a man knocked out of the pilot-house of the Neafie.
Q. Where did Colton stand?
A. He was on the lookout on the port side, close to the fore rigging.
Q. Was anybody else in the pilot-house except you at this time?
A. No; not after the pilot went out. There never is more
266 than one at the wheel, except it is heavy weather, or if she steers wild; then there are two.
Q. In a ship like yours, it is not possible to stop her headway immediately, particularly when she is in the midst of the current of the Mississippi River?
A. No; not to stop her headway.
Q. Was her headway stopped when this collision occurred?
A. She was going ahead a little with the current.

Q. The headway of an iron ship of her tonnage, in the midst of the current of the Mississippi River, is considerable, is it not?

A. It is pretty considerable; would carry her pretty fast.

Q. You said, just now, she carried a starboard helm; what did you mean by that?

A. She is harder on one side than on the other, and you have to allow for it.

Q. On which side is she harder?

A. On the starboard than what what she is on the port. She
267 will go faster around to port than she will to starboard.

Q. Had you looked at the compass shortly before this collission?

A. No; she carries it harder on the starboard than she does on the port, and you have got to allow for it.

Q. How were you steering at the time you first had your attention attracted by this boat?

A. The usual way down the river.

Q. How were you holding her helm then?

A. About midships.

Redirect:

Q. If there had been a steamboat below the place of collision, at the time of the collision, with her torches out, on either bank, would you have seen it?

A. I would have seen it.

Recross:

Q. Was not the fog thick in the bend?

A. I could see the banks of the river.

268 Q. Was not it thicker in the bends than anywhere else?

A. I could not say so. It was a fair night for running.

(Signed) THOS. THOMPSON.

MAY 3RD, 1872.

Testimony of LODGE COLTON, sworn and examined for the claimant.

Q. Are you employed on the steamship Juniata?

A. I am.

Q. How long have you been on her?

A. Now, about three and a half years. My position on her is first officer.

Q. Were you on her at the time of the collision with the Neafie?

A. I was.

Q. Were you on duty?

A. I was; it was my watch on deck.

Q. What part of the deck were you on?

A. Standing just forward of the pilot-house. When I first saw her I was standing forward of the pilot-house, but at the time of the collision I was standing at the rail.

Q. Where is your proper place?

269 A. Right about the pilot-house, forward.

Q. What was your object in being there?

A. To keep a lookout, and pass word to the pilot.

Q. Who was standing forward on the lookout?

A. Smith; he was there right at his place forward.

Q. Was the position of all the officers on duty around the deck all properly occupied?

A. Yes; that is my business, to see that everybody is at their place.

Q. How was your attention first called to the Neafie?

A. I saw the smoke. What attracted my attention first was hearing a whistle. I asked the pilot what it was; he said some of them little "luleys," musquitoe-boats, they call them.

Q. How far do you suppose she was from you at the time that you heard that whistle?

A. I suppose something in the neighborhood of two or three hundred yards; somewhere in that neighborhood.

270 Q. What did you understand she meant by that whistle?

A. I took her to be an ascending boat, by her blowing on' whistle.

Q. Are you certain the whistle came from her?

A. I should take it to come from her; I did not see anything else around there to blow a whistle.

Q. Did it sound like coming from the position she occupied?

A. Exactly.

Q. How long after this was it before the collision occurred?

A. Time hangs heavy on an occasion like that, when you are anxious; three or four minutes; it may have been five; may not have been so long; I could not tell to a minute; I was not timing it by a watch.

Q. At what angle did they come together?

A. The Neafie struck us with the luff of her bow right at the fore rigging. It appeared she was standing across the river when she struck us; our helm was hard aport at the time; about an angle of forty-

271 five degrees.

Q. When she blew her whistle, you answered it?

A. Yes, sir; and ported our helm; that threw our bow further around to the right.

Q. Before the collision occurred, how near had you approached to the right shore?

A. I should say we were better than half-way over to the right shore; nigher to the right bank, considerably, than we were to the left. It looked so to me by looking at the two banks.

Q. Could you see both banks at the time?

A. Yes, sir.

Q. In porting your helm, in answer to the signals of this vessel, that brought you towards the right bank?

A. Yes, sir; and further away from her, it ought to have brought us; when we first met her she was about two and a half points on our port bow.

Q. If she was an ascending boat, that was the proper signal to have given?

272 A. Yes, sir; and we opened the—if I get a vessel two and a half points on my bow, I consider she is safe, no matter how the wind is blowing. An ascending boat, I consider we are all safe when we both port our helms.

Q. How near did you get to the shore before you starboard your helm to get out?

A. Very close to the bushes; I heard the pilot say after the Neafie got clear, after the collision, "Hard a starboard," to get the ship right out from the bank, before we would strike the shore. At that time, I could almost have thrown a biscuit on the bank.

Q. Did you remain there any length of time to see if the Neafie needed anything?

A. Yes, sir; a short time. I suppose we remained from five to ten minutes before we went away.

Q. Did you see what became of the Neafie?

A. Yes, sir; she looked to me heading in towards the bank, on the opposite side; in towards the left bank; when she first struck
273 us I halloed, as loud as I could, whether they were hurt. She looked to me to be heading over towards the bank. I watched her until she got out of sight of us.

Q. How far was she towards the opposite shore when you lost sight of her?

A. I could not say, for the shore shut in a little there.

Q. How was the "Juniata" officered, manned, and equipped on that occasion?

A. I do not think there was one better left the port.

Q. Did you see any vessel below you at all at the time of the collision?

A. Just at that time I did not.

Q. How long after that did you see a vessel below you, or did you see any?

A. I think the first vessel we met after that might have been an hour or an hour and a half after; I do not exactly remember the time. I know we passed several steamers and sailing-vessels after that during the night.

274 Q. Just before the collision did you pass any?

A. Yes, sir; just before that.

Q. How far above?

A. Some distance above.

Q. Above the point?

A. I know we passed one just before we got down to Poverty Point.

Q. If there had been a vessel half a mile or a mile ahead, with pine torches burning, would you have seen it?

A. I think I would be apt to, except my eyes were shut.

Q. You were looking out?

A. Yes, sir; I always try to keep an eye around.

Q. Was the Juniata stopped when the vessel struck?

A. Yes, sir; she was stopped. I do not think her headway was stopped entirely; but her engines were stopped, and she had not much headway. The pilot, in order to bring her out clear of the shore, had to go ahead, full speed on her, to keep her from going on the bank.

Q. Can there be any doubt about your being then on the right shore?

A. I do not think there was the slightest. We were nigher
275 the right bank than the left.

Q. You had to starboard your helm to keep from running into the right bank?

A. Yes, sir; we were so close in.

Q. Did you hear the pilot, Phillips, say anything to those on board the Neafie just before the collision?

A. Yes, sir; he came out of the pilot-house and asked, "Where the hell they were going?"

Q. Was the Neafie at that time pursuing her proper course?

A. I do not think she was.

Q. Do not you know she was not?

A. I do not think she was; she appeared to me to be heading right across the river.

Q. If she continued that course, and had not met the Juniata, where would she have gone to?

A. Into the right bank, descending.

Q. Was the blow a hard one, the two vessels coming together?

A. No; I do not think it was.

Cross-examined:

276 Q. How long have you been going to sea?

A. I have been following the sea now twenty-two years and six months.

Q. How long have you been first officer?

A. I have been officer on vessels from eighteen years old. I have been first officer on this steamer three years. I was first officer on the Liberty about four years, and on sailing-vessels for fifteen years.

Q. Did not the Neafie leave from alongside of you at Jackson Square with the flat loaded with cement?

A. I believe she did.

Q. Was not the cement taken out of your ship?

A. Yes, sir; I believe it was a part of our cargo.

Q. You knew she went down the river?

A. I did not know whether she went down or up.

Q. You did not see her go?

A. I do not recollect noticing which way she went. I believe I saw her alongside the ship, but I did not know she was going
277 down the river. I had no idea where the cement was going.

Q. How far is Poverty Point from New Orleans?

A. I believe somewhere about thirty-five miles.

Q. At what time did you leave New Orleans?

A. A little before seven o'clock, or about half past six o'clock.

Q. And you reached Poverty Point about what time?

A. I think a little after ten o'clock; I do not know exactly the time.

Q. On nearing Poverty Point what course did your vessel pursue—when you came in sight of Poverty Point, what course did your vessel pursue?

A. Do you mean coming around the point?

Q. In coming around the point, towards which side of the river or along what bend did your vessel run?

A. She kept in the centre of the river, towards the right bank.

Q. She could not be in the centre and towards the right bank.

278 A. I say nigh the centre, towards the right bank; nigher to the right bank, if any, of the two.

Q. It is inconsistent to say a vessel is in the middle of the river and nigher to one bank than to the other.

A. Well, she was nighest to the right bank.

Q. Do you think she was in the centre of the river?

A. No, not exactly in the centre.

Q. Do you think she was about the centre?

A. I think she was nighest the right bank, if any.

Q. What do you mean by if any, if she was in the centre?

A. She was nighest the right bank of the river by fifty yards difference from the centre, or perhaps a hundred yards. I could not tell you to a yard, but by looking at both banks it looked to me as if she was nearer the right bank.

Q. Where were you when you heard the whistle which you thought came from the Neafie?

A. Standing just forward of the pilot-house?

279 Q. How was your helm at the time you first heard that whistle?

A. I suppose the man was going according to the pilot's orders; I do not know whether it was port or starboard, or what.

Q. At the time you first heard the whistle that you thought came from the Neafie, you do not know how your helm was?

A. No; but I heard the pilot tell the man at the wheel to port his helm when he answered it, but at the time I heard the whistle I could not tell.

Q. How far were you standing from the pilot?

A. About two yards.

Q. Did you see the smoke of the Neafie after you heard the whistle?

A. I think I did.

Q. Cannot you be sure whether you did or not?

A. I will not be sure in regard to whether I saw the smoke or not, but I am confident I did, because it is natural for a steamboat to send smoke up.

Q. Then you only infer that you saw it?

280 A. I saw the steamer's smoke before I heard the whistle.

Q. Did you keep on about the middle of the river?

A. No; could not keep on about the middle of the river, because it would take her out of her course.

Q. How did you run after you heard the pilot give that order?

A. The ship sheered off when the order was given to port her helm. That set us closer into the right bank.

Q. How long after the order to port the helm was given was it before the collision actually occurred?

A. You mean the first time he ported his helm?

Q. You tell me you heard the pilot say "Port your helm," to the quartermaster; how long after that order was given was it before the collision actually happened?

A. It might have been from three to seven minutes, or ten minutes. I cannot tell exactly in regard to time, because time hangs heavy in such cases as that.

281 Q. Was not it almost immediately after the order was given that the collision occurred?

A. The first order? No, sir.

Q. What other order was given?

A. When I called the pilot's attention to the way she was coming he called to the man to throw his helm "hard aport." He had it port, but to throw it "hard aport;" a few minutes after that she collided. If we had kept our helm hard aport the whole time we would have run right high and dry into the bank.

Q. Where were you standing when the collision happened?

A. Leaning against the rail.

Q. Did you see a man knocked off the pilot-house?

A. I saw somebody fall, but do not know where he fell off. He fell on the tug's deck.

Q. You had to look down to see the Neafie, she was so much lower than you?

A. Yes, sir; to see the hull, but not the pilot-house.

Q. Did you see any white light?

A. I saw no white light on her.

Q. Did you see her red and green light?

282 A. Yes, sir; I saw both of her lights after she went astern, but no white lights.

Q. Was she directly astern of you?

A. No.
Q. On the same line with you?
A. No.
Q. Did you see a flat-boat alongside of the Neafie?
A. I did; what I took to be a flat.
Q. Did you see the flat-boat when it broke loose or was unmoored?
A. No.
Q. Did you watch the Neafie?
A. I did; as far as I could see her.
Q. And you saw her do what?
A. Like she was making for the bank of the river. I reported to the captain or pilot that she was making towards the left bank.
Q. Did not I understand you to say she came from the direction of the left bank?
A. That was the way I should judge she was coming, heading across the river on an angle.
Q. And she turned around and went back?
283 A. Yes; she would not have to turn all the way round but to starboard her helm. She would not have to turn her head up stream.
Q. But she would have to retrace her course?
A. Yes, sir; on an angle.
Q. Do I understand you to say that she did retrace her course?
A. She appeared to be heading in towards the bank of the river. What course it was I do not know, whether she was turning around to up-stream. She looked to me to be heading in towards the bank. I was not on her, and do not know what her course was.
Q. Was she ascending or descending the river when you came into collision with her?
A. Cutting across like a boat descending at an angle; not heading down stream, but descending at an angle.
Q. Did you look to see how near the shore you were when this collision occurred?
A. I looked to see after the collision occurred; after we got clear of her.
Q. When the collision occurred did you look to see how near the shore you were?
284 A. Just at that particular moment I did not, because I was watching in case the boat wanted assistance, but as soon as she got clear I looked over to the opposite bank; and I saw the opposite bank before we collided, and I knew we were nearer to the right bank.
Q. Do you think, at the time you collided, you were any nearer to the right bank than you were when you first heard the pilot order the quartermaster to port his helm?
A. Most undoubtedly I do. No use of having a helm on a ship if she do not answer it.
Q. How near the right bank do you think you were when the collision happened?
A. We were pretty close to it; I do not know exactly how many feet. When we started ahead, after the pilot gave the order to go ahead, I believe I could pitch a biscuit to the right bank. I know he had to ring her up quick to haul her out. He had to go up in the rigging to keep from getting what he called hooked in on the right bank of the river going down from here.
285 Q. What did the pilot do after he went to the rail and called out, "Where the hell are you fellows coming?"

A. What could he do? The ship's wheel was hard aport.

Q. Did he stand there?

A. He stood there by the rail, and kept standing by the rail when we collided.

Q. And he kept standing there for some time, until after the collision was over?

A. After the collision he run up the rigging to watch the tow-boat and watch the opposite bank, and to look out for his ship, to give the necessary orders what to do. If we had started our steamer back, we would have struck her with the stern.

Q. Have you conversed with the pilot since this collision occurred?

A. No; I conversed with no one. When I give testimony I give it to the best of my knowledge, without conversing with anybody. I have very good eyes, and generally notice everything going on around
286 us. I am paid to do my duty, and I try to do it to the best of my ability.

Q. Was the pilot very excited that night?

A. No; he is not an excitable man by any means. I do not think there is a better pilot or a more careful man on the river. He has been piloting ships that I have been in a good many times up and down this river, and this is the first accident I know of, except a small lugger that tacked under our bow—the first, to my knowledge.

Q. Could you see a house on the bank?

A. If there had been one along there I could have seen it.

Q. Do you know where Wilkinson's plantation is?

A. I do not know that I do. I do not know one plantation on the river.

Q. Did you see a house on the left bank? You say you could see both banks.

A. I did not take particular notice. I did not see a house there.

Q. Did you see any coast packet on the river that evening?

287 A. Yes; if my memory is right, we passed one coast packet.

Q. About what time?

A. I will not be positive about the time.

Q. Approximate.

A. I do not recollect whether it was before we collided with this boat or not.

Q. Was not it about that time?

A. No.

Q. I do not mean exactly at that time, but about the same time. Did you pass her either shortly before or shortly after?

A. I think shortly before, if my memory is right. I will not be positive; I know we passed a lower-coast boat; I think it was.

Q. Was this packet under way, or landed?

A. I think she was towards the bank. I think she was making towards the bank. I think she was trying to get to the bank.

Q. Did she have torches out?

A. Yes, sir.

Q. Were they pine-knots?

A. Yes, sir; they have pine-knots burning when they are going
288 into the bank.

Q. This one in particular had?

A. Yes, sir; I think before we came down to her.

Q. Which bank of the river was she at when you saw her trying to make this landing?

A. On the left bank, if I mistake not.

Q. When she made her landing, did not she whistle?

A. It is customary for them, I believe, to blow.

Q. Did not this coast packet that had the pine knots burning, and was on the left bank of the river, blow her whistle, as coast packets usually do, when she landed?

A. Yes, sir; I suppose she did; but at the time the Neafie blowed her whistle there was not another boat in sight, either astern or ahead of her.

Q. Was not the coast packet of which you have spoken, with the pine-knots burning, that blew her whistle, from one to two miles below Poverty Point?

289 A. I am certain she was above it. I do not know the distance below Poverty Point that the collision occurred, but I do not think it was much over one or two miles, and I think this coast packet was some distance above Poverty Point.

Q. What distance above do you think she was?

A. I cannot tell exactly.

Q. I want you to approximate.

A. Maybe she was nine miles; perhaps six; perhaps ten. I cannot tell exactly the number of miles.

Q. Do you know where McCaul's Flats are?

A. I do not profess to know anything at all about the Mississippi River, only I can judge my distance from one bank to the other.

Q. Have you seen the wreck of the flat-boat that was sunk by this collision?

A. No, I have not.

Redirect:

Q. Was there any light upon the flat?

A. I did not see any.

290 Q. If there was a white light on it, would you have seen it?

A. I would be very apt; I know I would.

Q. Did you see a white light on anything that night?

A. I did not.

Q. Did not you look with all the eyes you had when you saw her approaching?

A. Yes, sir; and if there had been a white light on the flat I think I would have seen it before I came up to it; I know I would.

Recross:

Q. Suppose you and the Neafie had both been descending the river one directly in front of the other—you astern—would not the smoke stack have hidden the white light on the Neafie from you?

A. Yes, sir, it ought; but some tugs generally carry their lights there; but it would not have hid the lights aft. All tow-boats towing are supposed to have two bright lights forward and one aft. The smoke-stack could not have hidden the bright light on her flag-pole aft, nor on her tow.

291 Q. Do you know what the course of vessels descending the river at Poverty Point is; what the track of vessels is?

A. Some of them keeps right in the centre, some a little towards one bank and some to the other. Generally, I believe, they *to* try to keep towards the centre as nigh as possible; that is, descending vessels do. Some keep a little towards one bank an' some to the other; but generally nigh the *the* centre.

Q. Is that what you were trying to do that night?

A. We were going our proper course down, sir.

(Signed) LODGE COLTON.

Testimony taken by consent.

MAY 30TH, 1872.

The United States district attorney present, representing the libellant, and C. B. Singleton, esq., present, representing the claimant.

Testimony of C. W. HOWELL, sworn and examined for the libellant, the United , says:

292 I am a captain of engineers, in the Army of the United States.

Q. In what service are you?

A. In the Corps of Engineers.

Q. But in what immediate service now?

A. I am in charge of the works of public improvement and fortification in Louisiana and Texas.

Q. Do you know anything about a scow and contents that was taken in tow by the Neafie, and was sunk?

A. I am acquainted with the circumstances of the purchase of the scow and the loading of it, and the placing of it in charge of the Neafie to take to Fort Jackson.

Q. What was the cargo of the scow?

A. Five hundred barrels of Portland cement.

Q. To whom did the scow and cargo belong?

A. To the United States.

Q. What was the value of the scow?

A. I paid $140 for the scow itself.

293 Q. Have you got a copy of the vouchers?

A. (Witness produces one, and states:) This is a copy of the voucher, which includes the purchase of the scow and loading, and the expenses incurred, during the two days she was lying at the city, for watching her. The amount of the voucher is $195. (Voucher offered in evidence and marked "Exhibit Howell.")

Q. State the contents of this voucher.

A. The first item is $140 for one flat-boat. The next item is loading the flat with Portland cement, $50. The next item is two days' services of watchman on board of the flat, at $2.50 per day—$5.00; total, $195, received by Geo. Pursglove.

Q. That money was actually paid?

A. Actually paid to Mr. Pursglove, and this is a copy of his voucher for the payment.

Q. State the value of the cargo of Portland cement.

294 A. The price paid for the five hundred barrels in New York was $1,860; 500 barrels of Portland cement, at $3.75 per barrel, $1,860; paid to S. L. Merchant & Co. (Voucher offered in evidence and marked "No. 2 Howell.") I have a separate voucher for the freight.

Q. What was the expense of the transportation of that cement from New York?

A. From Philadelphia to New York, for freight and primage, $477.50, paid to Wm. Creevy, agent of the Juniata. (Voucher offered in evidence and marked "No. 3, Howell.")

Q. State whether this flat-boat and cement are a total loss.

A. Both were a total loss.

Q. Can you state whether or not this cement would be ruined by being submerged under water?

A. It would; the moment it is wetted it is spoiled, unless it is used immediately, within an hour or two. The total expenses, cost of flat-boat and cement, and freight and loading, etc., was $2,527.50.

Examined for the Juniata:

Q. What was the contract for towing the barge from Jackson
295 Square to Fort Jackson, that you made with Mr. Pursglove?

A. I think it was $160; that is my impression. I am not positive about it.

Q. Did he make a demand on you for it?

A. He did.

Q. Did you decline to pay it?

A. Yes.

Q. Why?

A. For the reason that his contract was not fulfilled to deliver it at Fort Jackson.

Q. Did he make a demand on you for towing the barge to Jackson Square, and the stage-boat from Jackson Square back?

A. That I do not remember. I remember that the bill was presented for the towage. I am not positive how much it was. I have the bill as presented, and can refer to it.

Q. $20?

A. Something like that.

Q. You did not pay either?

A. No.

Q. Why?

A. It was included, and part of the towage of the whole. The
296 whole contract of towage had not been complied with.

Cross-examined for the steamship Juniata:

Q. What make of cement was this?

A. White, London, England; artificial Portland cement.

Q. What is that cement worth here in this market?

A. I do not think that they have any of it in this market. I have not seen any.

(Signed) C. W. HOWELL,
Captain of Engineers, U. S. A.

Testimony taken by consent.

NOV. 16TH, 1872.

Counsel present, Carleton Hunt, esq., representing libellant, and C. B. Singleton, esq., representing claimant.

Testimony of Dr. D. C. Holliday, examined for libellant.

Q. Have you seen the libellant frequently since his accident?

A. I have.

Q. Have you noticed him closely?

A. I have.

Q. What is the condition of his case at present?

A. I see very little or no improvement since my last deposition.
297 Q. Has his locomotion improved?

A. I think not, or very trifling.

Q. What opinion have you in regard to his chances for recovery?

A. Predicated upon the past, I should think it would be very long, if it ever comes.

(Signed) D. C. HOLLEDAY.

H. C. HOPPER recalled on cross-examination.

Q. Are you still commanding the Neafie?

A. Yes.

Q. You stated in your examination-in-chief that you had license as a pilot at the time this collision occurred. Now I wish you would refresh your memory about that, because I (Mr. C. B. Singleton) have examined the records in the custom-house, and find your license had expired and you had not renewed it.

A. Still it was in my possession, and I was acting under it. I had called several times to get it renewed, but did not, and consequently held over until it was renewed.

298 Q. Had you applied previous to the date of this collision for the renewal of your license?

A. I applied a day or two after it run out.

Q. Was not that after the collision?

A. No; it was before the collision. I believe I called there some dozen times for my papers, and finally I told them I was not going there again, and Lewis, the clerk, said, "Leave the money, and you get the license at our leisure."

Q. Was the money in their hands for the renewal of this license before the collision?

A. I could not say whether it was or not; that is no consequence. I think my license expired on the 25th of December; I am not positive, but I think next day or the day after I called to have it renewed. Then probably there was a lapse of a week before I had time to call again. I had no time to be calling every day. Unless I could catch Capt. Flanders in and at leisure, I could not get it renewed; but that was no consequence; I was still acting under the old one.

Q. How long previous to the collision had you been to the cus-
299 tom-house or office to get your license renewed?

A. I could not say; probably within two days or a week; I was so busy at the time I could not go every moment to look after the license.

Q. Are you not required to renew it every year?

A. Every year.

Q. Do you consider you have any license when the year is expired and you have not renewed it?

A. Yes; I hold over just the same as any official here holds over.

Q. That is the way you view it?

A. Yes, sir.

Q. That you have a right to go under the old one until it is renewed, without regard to time?

A. Yes, sir.

Q. When did this collision happen?

A. February 10th.

Q. How long after the collision before you got your license?

A. I could not tell.

Q. Was not it within the next day or two after the collision; was not it on the 14th?

A. It may have been on the 14th or on the 12th; I cannot tell
300 the date without looking at the license.

Q. Have you got the old license?

A. No; it is in the possession of the Government. In renewing a license, the old one is returned and kept in the office.

Q. In your statement, have you told everything in your knowledge that is beneficial to the owners of the Juniata, or that you think might be beneficial?

A. I do not understand the question.

Q. Is there anything within your knowledge which you have not yet

told in your testimony that you think might be beneficial to the owners of the steamer Juniata?

A. I do not know anything that I could relate would be of benefit to them.

Q. Have you told all you know about this matter?

A. Certainly; the very position I was placed in on board the boat precluded the possibility of my knowing more than I told. I certainly, at night, going down the river, have my hands full looking ahead without looking behind me.

301 Redirect:

Q. Was there any difficulty made about renewing your license?

A. None at all; I have used a license nearly a year before it was renewed; I have gone eleven months under an old one.

Q. Is not it usual for pilots on the river to act under the old one until the new one is issued?

A. Yes; the same as all officials who hold over until their successors are appointed or qualified.

Q. How many licenses have you had?

A. Every year since the war; this is the fourteenth I have had—that is, including the four years there were no licenses issued.

(Signed) H. C. HOPPER.

[End of part 1st.]

(Here follows diagram marked page 302.)

303 PART 2ND OF TRANSCRIPT FROM THE U. S. DISTRICT COURT.

UNITED STATES *vs.* STEAMSHIP JUNIATA. } No. 9854.

Libel.—Filed March 8th, 1872.

United States of America, district of Louisiana, of the February term, 1872.

To the Hon. E. H. Durell, judge of the district court of the United States for the district of Louisiana:

The libel and complaint of the United States of America, herein appearing through J. R. Beckwith, U. S. attorney for the district of Louisiana, owner of the scow or flat boat and the cargo thereof, consisting of five hundred barrels of cement hereinafter described, against the steamship Juniata, whereof P. F. Hoxie now is or lately was master, her tackle, apparel, machinery, furniture, and boats, and against
304 all and all manner of persons lawfully intervening for their interest therein, in a cause of collision, civil and maratime.

And thereupon the said United States doth allege and propound as follows:

1st. That on and before the 10th day of February, A. D. 1872, the said United States, then and there being the owner of a flat-boat or scow of large dimensions, and of sufficient size and capacity to carry as lading 500 barrels of cement of the character and description used in constructing the walls of the forts erected by the United States, the said scow

or flat-boat then and there being in the port of New Orleans, in the district of Louisiana, did cause the same to be laden with a cargo consisting of 500 barrels of said cement, and the same craft being in all things well constructed and safe and seaworthy for that purpose, did then and there hire and procure the services of the tug-boat Neafie to tow
305 said craft with its said cargo from the said port of New Orleans, on a voyage from there down the Mississippi River, to the site of forts Jackson and St. Phillip, near the mouth of the said Mississippi River, where it was intended that said cement should be used & employed, either in the construction or repairs of one or both of said forts, or in outworks connected therewith.

That said craft, scow, or flat-boat, as well as said tug-boat Neafie, were completely rigged and sufficiently provided with tackle, apparel, and furniture, in all things sufficient for the safe and speedy prosecution of said voyage, and had a full & sufficient complement of hands to navigate both the said steam tug-boat and the said scow, with its lading as aforesaid.

2nd. That on the day last aforesaid the said tug-boat, with the said scow, and its said lading, lashed to said tug-boat in a secure and
306 proper manner, left said port of New Orleans on said voyage, & proceeded down said river, without the occurrence of anything extraordinary, until some distance below the city of New Orleans, and near a point or bend in said river, at a place called "Poverty Point," when said tug-boat was proceeding on its voyage with great care, the centre of the river being at the time covered with a slight fog, in order to be safe and secure from collision with the large crafts plying the said river, the master in charge of said tug-boat and tow hauled up close to the left bank of the river, out of the track of large vessels navigating the river, and was about the hour of 10 o'clock p. m. of said day last aforesaid prosecuting said voyage, running parallel with said left bank of the river and distant from said shore not more than 2 or 300 yards, with slow speed and all the lights required by law, in the several positions on said tug-boat as required by law, and burning brightly, and also
307 had a full and careful watch and lookout placed on said tug-boat, and after said tug-boat had passed said "Poverty Point," about five minutes thereafter, the master & lookout watch on the deck of the said tug-boat Neafie observed the said steamship Juniata, whereof the said P. F. Hoxie was master, of the burden of 1,000 tons or thereabouts, proceeding on a voyage down said river, with a full head of steam, and apparently proceeding with the full effect and force of her machinery for propulsion, tug-boat Neafie, and the said scow with its cargo in tow of said tug-boat as aforesaid, heading apparently from a point near the centre of the river towards the left bank of said river, and out of her true and legitimate course on a voyage down the river, and steering in such direction as to create great alarm in the minds of the officers and crew of the said tug-boat and the minds in those on the said scow or flat-boat, it
308 appearing that the said steamship Juniata must, if she continued on her course, cut down the said tug-boat and the said scow amidship by collision, and therefore the master, the said officers, and crew of the said steamship Juniata, utterly unmindful of the signals and lights on board of said tug-boat, which fully disclosed not only the position of the said tug-boat with its tow, but also the direction in which said tug-boat was steering, the master and others of the crew of said tug-boat, with loud and audible voices, called to the crew of the said steamship Juniata and desired them to keep clear of said tug-boat Neafie and the said scow with its cargo, and which they might readily have done, hav-

ing plenty of time and the assistance of the steam-power of the said steamship, but which they refused, or at least wholly neglected to do.

That the master of said tug-boat not having sufficient time or speed to cross the course of the said steamship and avoid collision, in hope to
309 avoid being struck amidship and cut down and sunk instantly, caused the engine of said tug-boat to be stopped and backed, by means whereof he so arrested the speed of said tug-boat and the tow as to prevent being struck amidships and sunk. Yet the said master and crew of said steamship Juniata continued on her said course without any change, and ran the ship with great force and violence against the said tug-boat Neafie, and against the said scow, with all its headway as aforesaid, and by the effect of said collision, knocked off one end of said scow, whereupon the water rushed in, and said flat-boat, or scow, with its said cargo, almost instantly filled with water and sank, whereby the said scow was totally wrecked and rendered valueless; and the said cement being hydraulic cement was and is utterly ruined, destroyed, and rendered of no value, by being brought in contact with and submerged in water, and both
310 said scow and said cement are totally lost to libellant.

3rd. That at the time the damage happened as set forth in the preceding article, it was impossible for the said tug-boat Neafie, with the said tow, to get out of the way of the said steamship Juniata, which said Juniata was at the time of the said collision running on an extraordinary course, and had not the said steamship collided with said tug-boat, in so unseamanlike manner was the Juniata navigated, that she must have eventually ran aground on the left bank of said river; that the first apparent intimation which the said officers and crew of said steamship Juniata had of the fact that said steamship was on a course for the left bank of the river, or nearly at right angles with her proper course, was the collision with said tug-boat and said scow; that although the shock of collision was very severe, that
311 men standing on the deck of said tug-boat were thrown flat on the deck of the said tug-boat, with great violence, and the officers and crew of said Juniata had, from the violence of said shock, reason to believe that the said tow-boat and said scow had been so severely injured as to leave them to sink, and peril the lives of the officers and crew thereof, yet the said officers and crew of the said Juniata, having by means of said collision, and of the lights on said tug-boat, and the course which said tug-boat was steering, ascertained the error of their course, and the danger involved therein of running aground, simply changed the course of the said Juniata to the proper course for vessels proceeding down said river, and proceeded on her voyage, without inquiry or apparent solicitude, either as to the fate of the said tug-boat or scow, or their respective crews and cargo; that the said officers
312 and crew of said tug-boat, by all means in their power, endeavored to avoid said collision; and but for the carelessness and unskilfulness of the officers and crew of the said Juniata, and the extraordinary course in which she was steering, said collision and damage would not have happened.

4th. That the said scow, or flat-boat, before and at the time of receiving the damage from said steamship Juniata, was tight, strong, and staunch, and in all things fitted for said voyage; that libellant then was & still is the lawful owner of said scow and said cargo, to wit, the said 500 barrels of cement.

5th. That the value of said scow was the full sum of one hundred and fifty dollars, and the same is by said collision wholly destroyed and lost to said libellant; that the value of said 500 barrels of cement was

twenty-three hundred & thirty-two dollars and fifty cents, all of which by the same cause is wholly lost to said libellant; that besides said loss
313 aforesaid libellant incurred and paid the following sums for stevedores' wages in loading said cement on said scow, the sum of $50; for watchman's wages the sum of $5; both of which said last-mentioned sums and also for the same cause lost to said libellant, making the whole loss and damage suffered by said libellant, from causes set forth in libel, the full sum of $2,527.50, all of which the said steamship Juniata is in law bound to pay, and for the payment of which the said libellant has a maritime lien on said vessel, her tackle, apparrel, machinery, boilers, & boats.

That all and singular the premises are true and under the admiralty and maritime jurisdiction of the court; that said collision occurred within the district of Louisiana, & the said steamship Juniata is now lying in the port of New Orleans, within the district of Louisiana. In
314 verification of the matters and allegations contained in the libel of demand, libellants crave leave to refer to the depositions and other proofs to be by it exhibited in this cause.

Wherefore, the premises considered, libellant prays that process in due form of law, according to the courts of admiralty and of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said steamship Juniata, her tackle, apparel, machinery, furniture, and boats, and that all persons having, or pretending to have, any right, title, interest therein, may be cited to appear and answer upon oath all and singular the matters propounded in this libel, and that this hon. court be pleased to pronounce for the damages aforesaid, and to decree such other and further relief to libellant as shall to law and justice appertain, also to condemn the said steamship, her tackle, apparel, &c., and all persons intervening for their interests therein, in costs.

315 (Signed) J. R. BECKWITH,
U. S. Atty. for the United States, Libellants.

J. R. BECKWITH,
Proctor for Libellants.

DISTRICT OF LOUISIANA:

J. R. Beckwith, being duly sworn, deposeth and saith that he is the duly-appointed attorney of the United States for the district of Louisiana aforesaid; that he knows the contents of the foregoing libel, and believes the same to be true in manner and form as therein set forth.

J. R. BECKWITH.

Sworn to and subscribed before me March 8th, 1872.
J. A. CHARBONNET,
Dy. Clerk.

Order.

Let admiralty process issue as prayed for.
March 8th, 1872.

K. LOEW, *Dy. Clerk.*

316 *Account annexed to libel.*

Steamship Juniata to United States, Dr.

To damage caused by her collision with and destruction of flat-boat and her cargo, as set out in the libel, viz:

Flat-boat	140 00
Cargo of 500 barrels of cement	2,332 50
Loading the same	50 00
Watchman, 2 days	5 00
	$2,527 50

Admiralty warrant.—Issued March 8th, 1872.

The President of the United States of America to the marshal of the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the steamship Juniata, now libelled by the United States
317 for the causes set forth in the libel now pending in district court of the United States for the district of Louisiana, that you do cite and admonish the owner or owners and all and every other person or persons having, or pretending to have, any right, title, or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have, or can, why the said steamship should not be condemned and sold agreeably to the prayer of libellant; and how you have executed this warrant, that you make return according to law.

Witness the honorable Edward H. Durell, judge of the said court, at New Orleans, this 8th day of March, 1872, and the 96th year of the Independence of the United States.

[SEAL.] K. LOEW, *Dy. Clerk.*

318 U. S. district court.

UNITED STATES *vs.* STEAMSHIP JUNIATA. } No. 9854.—Ad. warrant.

Marshal's return.

MARCH 9TH, 1872.

On the same day, month, & year, seized and took into my possession the steamship Juniata, her tackle, &c., and placed a keeper thereon.

CHS. R. STEELE,
Dy. Marshal.

Claim.—Filed March 9th, 1872.

U. S. dist. court, dist. of Louisiana, in admiralty.

U. S. *vs.* ST. SHIP JUNIATA. } No. 9854.

And now comes Pierce F. Hoxie, and says that he is the master of the said steamship Juniata, libelled herein, and as such is the lawful bailee of said steamship, her tackle, apparel, and furniture; and that the
319 Philadelphia and Southern Mail Steamship Company, a duly-incorporated body under the laws of Pennsylvania, and domiciled in the city of Philadelphia, is the true and bona-fide owner thereof; and

that he is desirous that said steamship be released to him as bailee of said steamship Juniata, upon executing such bond, with good and solvent security, as the court may direct.

PIERCE F. HOXIE.

Sworn to and subscribed before me March 9th, 1872.

J. A. CHARBONNET,
Dy. Clerk.

Release-bond.—Filed March 9th, 1872.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Pierce F. Hoxie, master and lawful bailee of the claimant and owner of the S. S. Juniata, as principal, and C. Schneider, as surety, are held and firmly bound unto the United States, libellant, in the sum of five thousand one hundred dollars, lawful money of the United States of America, for the pay-
320 ment whereof, to the said libellant or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Witness our respective names and seals hereunto affixed by us at New Orleans, this 9th day of March, one thousand eight hundred and seventy-two.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suit of United States vs. S. S. Juniata, her tackle, apparel, and furniture, and numbered on the docket of the said court, commanding the marshal to seize and take into his possession the said steamship, which has been seized accordingly, but has been released from said seizure, and delivered to P. F. Hoxie, the claimant and bailee thereof, by reason of the signing, sealing, and delivery of these presents, said having obtained leave of court to bond said
321 property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now, the condition of the above obligation is such, that if the said claimant and surety abide by all the orders, interlocutory or final, of the court, and pay the said libellant the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

(Signed) PIERCE F. HOXIE. [L. S.]
(Signed) C. SCHNEIDER. [L. S.]

Signed, sealed, and delivered in the presence of, in open court,

K. LOEW, *Dy. Clerk.*

Writ of release.—Issued March 9, 1872.

United States district court, district of Louisiana.

NEW ORLEANS, *Clerk's Office.*

322 UNITED STATES
vs.
S. S. JUNIATA. } No. 9854.

The President of the United States of America to the marshal of the district of Louisiana or his lawful deputy, greeting:

Whereas P. F. Hoxie, master and lawful bailee for the owners of said

steamship, hath this day filed a claim thereto on behalf of said owners, and which said claim is now of record in this office:

You are hereby authorized to release the said steamship from seizure, and her to restore to the possession and custody of said claimant, he having given bond conditioned as required by law, and otherwise complied with the rules of the court, &c., and make return hereon of your doings in the premises.

Witness the Hon. Edward H. Durell, judge of said court, at New Orleans, this 9th day of March, A. D. 1872, and the 96 year *the* of the
323 Independence of the United States.

[SEAL.] J. A. CHARBONNET,
Dy. Clerk.

Marshal's return.

U. S. district court, district of Louisiana.

U. S.
versus } No. 9854.
S. S. JUNIATA.

Received March 9th, 1872, and on same day released within-named steamship.

Q. W. DEKLYNE,
Dy. U. S. Marshal.

Rule to reduce bond.

MARCH 9TH, 1872.

GEO. PURSGLOVE
vs. } No. 9852.
S. S. JUNIATA.

On motion of Randolph, Singleton, & Browne, proctors for claimant, ordered that the libellant show cause on 11th instant at 11 a. m. why the bond given for the release of the boat should not be reduced.

324 MARCH 11, 1872.

GEO. PURSGLOVE
vs.
STR. JUNIATA.

The rule to reduce the release-bond in this cause was called, and after hearing counsel on both sides the court took time to consider.

Answer.—Filed April 4th, 1872.

UNITED STATES
vs. } No. 9854.—In admiralty.
STEAMSHIP JUNIATA.

To the hon. the judge of the United States district court for the district of Louisiana:

The answer of Pierce F. Hoxie, master and claimant of the steamship Juniata, in behalf of the Philadelphia and Southern Mail Steamship Company, the owners thereof, to the libel of the United States of America, herein appearing, through J. R. Beckwith, U. S. attorney for the district of Louisiana, in a cause of collision civil and maritime:

325 And now comes Pierce F. Hoxie, master of the steamship Juniata, and intervening for the interest of the Philadelphia and South-

ern Mail Steamship Company, the owner thereof, and for answer to the libel herein filed on behalf of the United States, through J. R. Beckwith, U. S. attorney for the district of Louisiana, against said steamship, her machinery, boats, &c., doth allege and propound as follows:

1st. That the Philadelphia and Southern Mail Steamship Company is the true and bona-fide owner of said steamship Juniata, and that no other person is the owner thereof, and that the said Pierce F. Hoxie is now the master of said steamship, and as such master has the possession and is the lawful bailee thereof for the said Philadelphia & Southern Mail Steamship Company.

2d.—Answer to the 1st article of said libel.

326 This respondent avers that he has no knowledge of the matters and things alleged and pleaded in said 1st article, and neither confesses nor denies the same, but will require strict proof thereof; but respondent especially denies that the tug-boat Neafie and the said scow, or flat-boat, which she was towing, were properly rigged, and sufficiently provided with tackle, apparel, and furniture, as is alleged and pleaded in said 1st article.

And respondent also denies that there was a full and sufficient complement of hands and skilled and proper officers in charge of said steam-tug and the said scow or flat-boat, as is alleged in said 1st article; but, on the contrary, respondent alleges and propounds that there was no regularly-licensed or skilled pilot on board and in charge of said steam-tug.

And respondent further alleges and propounds that said steam-tug and scow or flat-boat were not, at the time of the collision hereafter described, in a sound and seaworthy condition.

327 *3d.—Answer to the second article of said libel.*

Respondent avers that the matters and things contained in said article are in great part falsely and untruly alleged and pleaded, but the facts and truths are, and respondent doth so allege and propound, that the steamship Juniata, an iron propeller of about 1,215 tons, whereof respondent was and is master, steamed on a voyage from the port of New Orleans, bound for the port of Philadelphia, leaving the port of New Orleans about 7 o'clock p. m. of the 10th of February, 1872; that said steamship was and is tight, staunch, and strong, properly equipped, and manned with a full complement of skilful and efficient officers and crew, and in charge of a skillful and efficient pilot.

That said steamship proceeded on her said voyage down the Miss'ippi River, from the port of New Orleans, in the usual and proper course of navigation, until shortly after 10 o'clock of the night of the 10th of

328 February aforesaid, after having passed the point known as "Poverty Point" a short distance, (which is on the left bank of the river,) and when about the middle of the river, and intended to descend the river near the right bank in the stretch below, as is usual and customary in that part of the river, with all her lights set, a lookout stationed forward, when George L. Phillips, the pilot of said steamship, who was on deck in front of the pilot-house, being on watch & on the lookout, discovered a vessel (which afterwards proved to be the steam-tug Neaffie with a tow) well on the port bow of the steamship Juniata, without any of the usual and necessary lights to indicate her character or course, about the middle of the river, & distant about a thousand or twelve hundred yards; that immediately upon discovering

this vessel the helm of the steamship Juniata was put to port, in order to pass between the said vessel and the right bank of the river; that shortly after, and when nearing the usual signalling distance, the
329 said vessel blew one blast of her steam-whistle, indicating that she would go to the right, and immediately thereafter one signal of one blast of her steam-whistle was given by the Juniata in answer thereto; that it being the duty of an ascending boat to select or choose the side on which she would pass, the officer on watch on said steamship, when said steam-tug gave said signal, was satisfied that it was an ascending steamer, (although no light except one white light was visible on her,) and ported the helm of the steamship still more, in order to give said steamer an abundance of sea-room to pass on the larboard side of said steamship.

That almost immediately thereafter it was discovered that the said steam-tug was crossing the river approaching rapidly the course or track which the steamship Juniata was pursuing, (which was at the time east-southeast and the proper course;) that thereupon the engines of the Juniata were reversed, and she commenced backing in order
330 to stop her as quickly as possible, and her helm was put hard aport, but that, despite all the efforts of the officers and crew in charge of the Juniata to avoid a collision, and despite the crying out of the pilot of the steamship Juniata to those in charge of the steam-tug Neaffie, "Where are you coming to," the steam-tug continued her course with her helm aport, (which brought her across the course of the steamship,) and with her tow ran into and struck the steamship Juniata on her larboard side about 10 feet abaft the fore-rigging; that at the moment of collision the steamship had steerage-way only, and was near the right bank of the river that it was with great difficulty that the steamship was saved from going aground after the collision occurred by putting her helm hard astarboard.

That those in charge of the steamship did everything in their power, and that was possible to be done, to avoid the said collision, which was caused solely by the unskillfulness, mismanagement, reckless
331 conduct, and ignorance of those in charge of said steam-tug; that those in charge of said steam-tug must have seen the larboard light of the steamship, and known that she was steering so as to pass on the starboard side of the steam-tug; that the one blast of her signal given by the Juniata must have indicated to those in charge of the steam-tug (if they knew their duty) that the Juniata was going to the starboard of the steam-tug descending the right bank of the river; that notwithstanding all this, instead of keeping on their course, as it was their duty to have done, they ported the helm of the steam-tug, making her course across that of the steamship; that in consequence of this illegal, reckless, and unwarrantable conduct on the part of those in charge of the steam-tug, the Juniata, while passing the steam-tug (the latter continuing to carry a port helm, thereby throwing her with her tow across the course of the steamship) struck with her tow the
332 steamship on the larboard side about ten feet abaft the fore-rigging, and swung along the larboard side of the steamship, bring' the steam-tug, which was on the starboard side of the tow, against the side of the steamship Juniata.

That such was the course of the steam-tug at the moment of collision that she would have run into the right bank of the river inevitably in a few moments had she not collided with the steamship Juniata.

Respondent avers that there were not two lights, one above the other, on the steam-tug at the time of collision, as are required by law, nor

were there any lights whatever on the scow or flat-boat which she was towing. Respondent avers that after the collision the Juniata waited to see if any assistance was wanted, but that no signal of distress of any kind being given and the steam-tug being apparently undamaged, the steamship then proceeded on her voyage.

333 And respondent avers that he had no knowledge of the sinking of the scow or flat-boat until after reaching Philadelphia, when he was advised by letter of the fact.

And respondent alleges and propounds that all the matters and things alleged in said 3d article of said libel differing from the foregoing statements of facts contained in this article are untrue, and falsely alleged and pleaded.

4th.—Answer to the 3d article of said libel.

Respondent avers that the matters and things contained in the 3rd article of said libel are in great part falsely and untruly alleged and pleaded.

And respondent alleges that the facts and truth are as are truly alleged and pleaded in the 3d article of this answer.

Respondent, further answering, avers that the steam-tug, with her tow, instead of pursuing her course down the river, as she ought to have done, when the steamship Juniata was discovered, and in which course and position she was safely out of the track of the steamship, was

334 recklessly, ignorantly, and carelessly steered, managed, and navigated, so as to make her course across that of the steamship, and thus to make a collision inevitable; that had the said steam-tug and her tow been properly and skillfully handled and steered, no collision would have occurred; that those in charge of her made no effort to avoid a collision until it was too late.

5th.—Answer to the 4th article of said libel.

Respondent avers that the matters and things set forth in the fourth article of said libel are, for the most part, unknown to him, and he neither confesses nor denies the same, but will require strict proof thereof.

Respondent denies that said scow or flat-boat was tight, staunch, and strong, and well fitted for her voyage, and avers that she had no lights on her at the time of collision such as are required by law.

6th.—Answer to the 6th article of said libel.

335 Respondent denies that the Juniata is bound to pay damages (if any there be) which libellant suffered, nor for the value of the scow or flat-boat, nor any other claim made by libellant.

7th.—Answer to 6th article of said libel.

Respondent avers that the premises as set forth in said libel and said 5th article are not true, but the truth and fact is as hereinbefore set forth in this and the foregoing articles of this answer.

Respondent avers that this hon. court has jurisdiction in the premises.

Therefore the respondent asks that your honor will be pleased to pronounce against libellant's demand, and will decree that said libel be dismissed with costs.

PIERCE F. HOXIE.

RANDOLPH, SINGLETON & BROWNE,
Proctors for Claimants.

Sworn to and subscribed before me 4th April, 1872.
J. A. CHARBONNET,
Dy. Clerk.

336 *Rule to reduce bond in* 9852.

MARCH 9TH, 1872.

GEO. PURSGLOVE *vs.* S. S. JUNIATA. } 9852.

On motion of Randolph, Singleton & Browne, proctors for claimant, ordered, that the libellant show cause on 11th inst., at 11 a. m., why the bond given for the release of the vessel be not reduced.

Submission of rule.

MARCH 11, 1872.

GEO. PURSGLOVE *vs.* JUNIATA. } 9852.

The rule to reduce the release-bond in this cause was called; and after hearing counsel on both sides, the court took time to consider.

Order discharging rule.

APRIL 9TH, 1872.

GEO. PURSGLOVE *vs.* S. S. JUNIATA. } 9852.

337 Ordered, that claimant's application to reduce the amount of the release-bond in this case be overruled.

Hearing and continuance.

APRIL 30TH, 1873.

UNITED STATES *vs.* S. S. JUNIATA. } 9854.

GEO. PURSGLOVE *vs.* SAME. } 9852.

The above cases were called, and by consent of counsel tried together.
J. R. Beckwith, dist. atty., for the U. S.; Randell and Carleton Hunt for Pursglove; Randolph, Singleton, and Browne for claimant.
When, after hearing the pleadings and evidence in part, the cause is continued till to-morrow at 11 a. m.

Note of evidence taken at hearing Apl. 30th, 1873.

G. PURSGLOVE *vs.* S. S. JUNIATA. } 9852.

U. S. *vs.* SAME. } 9854.

The proctors offered in evidence the testimony taken for their

338 *for their* respective clients, and to be found in the printed record, or part first of this transcript.

Libellants offered deposition marked "OO."

Claimant offered deposition PP.

Libellant Pursglove offered statement gross earnings, hereto attached, marked "QQ."

Defendants, plan RR.

Testimony for libellant marked "OO" taken by consent of counsel April 29th, 1873, subject to all legal objections save as to time, mode, and manner of taking.

DANL. C. HOLLIDAY, M. D., sworn and examined for libellant.

Q. Will you be good enough to describe the present condition of Mr. Geo. Pursglove, the libellant?

A. He appears to nourish better than he did, but still the power of locomotion does not appear to be at all improved. He has the
339 same uns'eadiness of gait and apparent suffering when in motion. Nor do I think between my last examination and the present there has been any marked improvement, and I begin to fear that there never will be.

Q. Is it not very common, in cases like his, when they have not improved after such an interval as you speak of, for them never to improve?

A. Yes; rather points to that; the improvement is very improbable then.

Q. Would it be injurious to him to exert himself actively, do you think, in his present condition?

A. It is rather impossible. He cannot make much exertion; his locomotion is exceedingly defective. Anything pushed to fatigue, exertion pushed to fatigue would be detrimental to his improvement. Exertion pushed to fatigue I think would be detrimental to his condition.

Q. You think there has been a gradual progress in his disorder?

340 A. I cannot define it by the word progress. It appears to be stationary. It does not improve, so far as I can judge.

Q. What is the nature of the special disease from which he suffers, in your opinion?

A. Partial paralysis, the result of concussion.

Q. What is the immediate effect on the spine? What has it brought about?

A. It has brought about the defective power of locomotion.

Q. That is the remote result?

A. Yes; seems it produced immediate paralysis. The result from concussion is to produce a want of nervous action in the muscular system, which results in more or less paralysis or want of action. That is what we define by paralysis.

Q. Will he be able to move at all without the aid of a stick?

A. I am fearful that he never will.

Cross-examined:

341 Q. How long have you been attending him?

A. I do not know. I believe it has been over a year. I am satisfied it has.

Q. Were you called to see him when he was first injured?

A. No.

Q. How long after the first injury were you called?

A. I think about 4 months.
Q. What has been the outline of your treatment?
A. It has been simply to allow him to recuperate. Medication has not been followed out.
Q. Where is the injury? Where was the blow struck?
A. I suppose he was struck on the head. He can give but a very undefined account of himself. He fell, and when he recovered he was at home; all he knows about it.
Q. Any bruises or marks on him?
A. Yes; he was pretty much bruised. They had, however, disappeared before I saw him, the external injuries had disappeared.
Q. Can you say that no other cause than that which he received from the fall on board his boat has intervened to produce any of this deranged system you speak of?
A. I cannot say so; these are effects, because we only deal in probabilities.
Q. You do not know whether any other cause has intervened between that time to impair these effects or produce this effect or not?
A. No.
Q. Have you not seen persons in that condition that Mr. Pursglove is now in who had not received an immediate or severe blow?
A. No; not coming on suddenly.
Q. You do not know how suddenly this made its appearance, as you did not see him for four months after?
343 A. I knew him previous to that time and previous to this injury, and he never showed any evidence of being an invalid. But I could not positively assert anything of the kind.
Q. You did not see him until about 4 months after he received the injury by falling in this vessel?
A. I did not.
Q. Is there any spinal chord injured in any way?
A. I think there is. I think that is the whole source of trouble, concussion of the spine.
Q. Where was the injury when you first saw him?
A. I think the injury was on the head; the blow was on the head, and the injury transmitted to the spinal column. I think he must have fallen forward on the head.
Q. Might not a party being treated improperly, who has received a terrible blow, produce the very effects that he complains of?
A. I think not.
344 Q. How many causes does paralysis spring from?
A. From many causes—appoplexy; so many there is no use assigning them, besides accident.
Q. Can you say any of these has not supervened since he received these injuries from falling on board his vessel?
A. Certainly not since I saw him.
Q. But since the time he fell on the ship or boat?
A. I cannot speak before I saw him.
Q. No change for the worse since you have seen him?
A. No; but there is no improvement, either.
Q. Is there any weakness particularly anywhere?
A. Yes; in the limbs.
Q. His arms, legs, or what?
A. Legs and arms, too, but especially the legs.
Q. No mental derangement or effect?

A. I never noticed any.

Q. Does not paralysis often present some of the greatest mys-
345 teries of your profession?

A. Yes.

Redirect:

Q. What is the meaning of lesion in such cases?

A. Injury, garbling of functions.

Q. There has been lesion produced in this case?

A. I think so, and I fear permanent lesion.

Q. Can you describe his gait? Compare it with his natural gait before.

A. He always, in walking, has to increase the base, carry his legs wide apart; has an uncertainty in getting contact with the ground; a vacillating way of raising his legs and putting them down, as if not aware of the rapidity with which his feet came in contact with the pavement; a general unsteadiness of gait more than anything else.

Q. And before, when you knew him before that injury?

A. I never knew anything of that kind. On the contrary, I
346 always thought him a remarkably quick man in his motions.

Q. And such a gait as you describe is one entirely where lesion has been produced?

A. In the spine—yes.

Q. Generally speaking, he is not the man he was before?

A. Oh, dear, no, sir.

Q. And is not that, according to the books, a common result of such an injury?

A. Always.

Q. And you fear he never will be?

A. Yes.

Recross:

Q. What aged man is he?

A. I do not know his age; 38 or 40. (Mr. Pursglove, who is present, says he is 44 years old.)

Redirect:

Q. In such injury is not rapid decline apt to follow after such a condition as he has been in?

A. Yes; it is apt to follow.

347 Q. What is the character of such a decline, generally in those cases?

A. Generally increased difficulty of locomotion, until it amounts to complete paralysis.

Q. In his case, would it surprise you to see those symptoms at any time?

A. It is hard to make a prognoscis. It is very difficult to make a prognoscis; it would not surprise me, but, at the same time, I must say I do not look for it.

Q. These are, however, inscrutable cases generally?

A. It is impossible to tell the result; it is impossible, for the extent of lesion is always hidden.

(Signed) D. C. HOLLIDAY, M. D.

Sworn to and subscribed before me this 29th day of April, 1873.

J. O. LOUGHLIN,

Dy. Clerk 5th District Ct., Commissioner by consent of Counsel.

348 GEO. PURSGLOVE, sworn and examined for libellant.

Q. Have you suffered any injury, by accident or otherwise, since you were thrown by this collision from your boat?

A. I have not. I have endeavored to take the best kind of care of myself.

Q. Has not the Juniata been frequently to this port since the trip when you were injured?

A. Yes; every month, the line is here every two weeks. The Yazoo is here now.

(Signed) GEO. PURSGLOVE.

Sworn and signed before me this 29th day of April, 1873.

J. O. LOUGHLIN,
Dy. Clerk 5th District Court, Commissioner by consent of Counsel.

Testimony for claimant, taken by consent of counsel, October 17th, 1872, and filed in trial 30 April, 1873, marked "PP:"

349 GEO. PURSGLOVE *vs.* STEAMSHIP JUNIATA. } 9852.

LOUIS REINHARDT, sworn and examined for the claimant.

Q. What is your occupation?
A. Master and pilot of steam-vessels.
Q. How long have you been piloting steam-vessels?
A. 28 years.
Q. Where?
A. In the Lower Mississippi river and coast.
Q. Do you live in New Orleans?
A. I do.
Q. Have you lived in New Orleans all that time?
A. I have been here since 1838.
Q. Have you been what is called a branch pilot?
A. I am a Government licensed pilot.
Q. Have you been in the habit of towing vessels in from the sea?
A. Yes; that was my former business for a number of years.
350 Q. How long have you been engaged in that business?
A. From 1839 to 1859.
Q. Are you perfectly familiar with the Mississippi River between here and the mouth?
A. Perfectly so.
Q. Has there been any change in the Mississippi River just above and below Poverty Point for the last forty years?
A. No; none of any consequence.
Q. In the bed of the river?
A. No change; no material change.
Q. Did you have occasion to make plans of the river just above and below Poverty Point?
A. I had occasion recently, at the request of Mr. Wm. Creevy, to make a chart.
Q. Is that the chart you made?
A. Yes, sir. (Chart marked "Z.")
Q. What is the scale on that?
A. 12 inches to the mile.

Q. Is that a correct representation of the river? (Chart offered in evidence.)

A. It is actually so.

351 Q. What is about the width of the river below Poverty Point, as appears in this plan?

A. A half a mile.

Q. Is that a true representation of the point of the compass in that map Z?

A. Yes; that is the true direction and course of the river below and above the point.

Q. Did you obtain your information by actual observation, by looking at the river, by which you made this map?

A. I passed by there, I suppose, hundreds and hundreds of times. I did not actually go down and survey it and measure it, but it is the absolute width of the river; it may be a little more, but I saw it measured in different places, and that is about the aggregate, half a mile.

Q. Here is a map. (B, already offered in evidence by libellant.) Examine this map B; is that a correct map?

A. It is not a correct drawing of the river, in my judgment;

352 the course of the river below Poverty Point should be ESE. and WNW.

Q. Whereas they have got it on this map as what?

A. It would come near NE. and SW., which is not the correct course of the river.

Q. You had occasion to observe your compass passing below Poverty Point as represented on this map?

A. Absolutely; I always did.

Q. A good many times you had occasion to examine your compass?

A. Yes, sir.

Q. And you know the river's course?

A. Yes, sir; it is absolutely necessary to know it; I could not be a competent pilot except I knew it; every reach in the river must be known to a pilot.

Q. Were you on board the Juniata on the night of the collision with the Neafie?

A. I was.

353 Q. Were you a passenger, or were you in the employ of the vessel?

A. I was a passenger, going down to the passes.

Q. Did you hear anything of the collision?

A. I was in my bed at the time; the first I heard the ship stopped suddenly, which warned me, and I heard the thud, as it were, against the side. That is all I know of the collision.

Q. What did you do when you heard this thud?

A. I got out of my berth and went on deck.

Q. Did you go up immediately?

A. Yes, sir; as soon as I could; my impression was that the engine was broke. I remarked that the engine was broken.

Q. You went up stairs on deck immediately?

A. Yes.

Q. You did not stop to dress, or anything of the kind?

354 A. No; no great necessity for dressing, because I slept with my pantaloons on, which I invariably did when I went on board a vessel of that kind going down, expecting to get off early in the morning.

Q. When you came on deck what did you observe?

A. The first thing that I observed was what I took to be a little propeller with something alongside astern of us.

Q. How far was she from you when you came up to observe?

A. I judge she was near the middle of the river.

Q. How was the proper course to run down around Poverty Point in a vessel like the Juniata?

A. Steer down south until we get opposite Poverty Point, and haul around gradually to the eastward until you are ESE., which is straight down the reach.

Q. Did you notice or not the Juniata was heading correctly at
355 that time, or what was her position when you came up to observe?

A. She was stopped when I came upon deck, stopped dead before I heard the thud, which proved to be the collision afterwards, and which I did not know what it was; I heard the thud and did not know what it was, but she was stopped dead, heading down stream—heading fair down stream in the reach when I got up.

Q. And the little Neaffie was about 300 yards to the rear?

A. Yes, sir.

Q. Where is Bertrande's store on this map?

A. It must be what is called the St. Sophie's grocery.

Q. Is that the only house on that shore right opposite?

A. Yes; that is the only house there. There are some houses further down; a settlement. It goes by that name; I do not know about how near it is.

356 Q. Does that on this map stand in proper position as regards Myrtle Grove plantation?

A. Yes, sir; right opposite.

Q. If the collision happened opposite Myrtle Grove plantation, the vessel was 300 yards or thereabouts below there before you came up?

A. She was not far below there, because there was no current in the river, and she, being stopped dead, did not drift far; the river was low at the time.

Q. Along the eddy is there any flat surface?

A. Yes, sir; there is a false bank—a short, small flat makes out here opposite St. Sophie's grocery.

Q. Whereabouts was the wreck of the flat-boat laying?

A. I do not know that I have noticed her particularly; but she was lying somewheres in the neighborhood of that grocery. I have never noticed her at all, until long afterwards.

Q. When you did notice her she was lying nearly opposite St.
357 Sophie's grocery?

A. Yes; about a month afterwards.

Q. How is the bank on the right-hand shore, down along the bends?

A. A steep, bold shore; deep water.

Q. Did you notice any steamboats or lights below you when you came up on deck?

A. No; I noticed nothing but this little boat astern.

Q. If there had been a steamboat below with large torches of pine wood burning, would not you be apt to have seen it when you were on deck?

A. Yes, sir.

Q. Did you hear any signals given by other boats?

A. No; none.

Q. What was it that woke you, the collision or the stopping of the ship?

A. The stopping of the ship woke me in the first place.

Q. In rounding Poverty Point, would not a vessel go around
358 under that bank; have a natural tendency to go into the bend?

A. If there is any current, the current sits over into the bend.

Q. Its tendency is not to hug around, but to float around into the bend.

A. Yes, sir; that is the natural tendency of the current or vessel.

Q. When you came on deck and saw the Neafie and the position of the Juniata, I wish you to state whether it was possible for the Neafie to have pursued the course indicated in map B when you saw her?

A. No; I do not think it was possible. I made this chart, as requested. I suppose Mr. Creevy knowing I knew how to make it, I gave the proper course a vessel should go down. The position indicated as it is here on map Z is the position which Capt. Phillips indicated to me on the map at the time the two vessels came together, for he ought to be the best judge exactly.

359 Q. When you came on deck could you observe the bank on either side—on both shores?

A. Yes, sir; I saw both shores, especially this sugar-house, this Myrtle Grove plantation, Wilkinson's.

Q. When you came on deck, how far below Myrtle Grove was the Juniata at that time?

A. Very little below the plantation as I came on deck.

Q. Have you ever devoted any time to the science of engineering and drawing maps?

A. It is not my business, but I know how to do it, especially when I get paid for it. I presume if they could get somebody to do it as well they would not have employed me.

Q. Are these willows, groves, trees, and all the other objects along the bank properly represented in this map?

A. Yes; where I have marked woods are so, and the willows
360 are where I have marked, and the rest is naked shore on either side.

Cross-examined:

Q. How are you employed now?

A. Piloting steamships.

Q. Of what line?

A. The line that I piloted for a number of years has been withdrawn. I have no permanent line now.

Q. What steamships do you pilot now?

A. No particular line.

C. How long has it been since you were down the river?

A. I have been down the river two months ago.

Q. When was it that this collision occurred?

A. On the night of February 10th.

Q. Have you been down the river frequently since then?

A. Yes, sir.

Q. How often, do you suppose?

A. I suppose a dozen times.

361 Q. Have you your license with you?

A. I have not it with me.

Q. Will you be kind enough to bring it?

A. I will.

Q. Were you a passenger on the Juniata on the night of the collision?

A. Yes, sir.

Q. How long had you been asleep when you were awoken?

A. I must have been asleep about an hour, I think, or may be a little longer.

Q. You arose in great haste?

A. I arose in haste to see what was the matter, and why the machinery stopped working.

Q. Did you stop to adjust any part of your dress?

A. No; I went on deck as I was. I had my pantaloons and vest on; my shoes were off, and I just run on deck.

362 Q. When you run on deck, on which side did you go out—on the port or starboard?

A. I came out on the port side; I was asleep in the after lower cabin, close by the stairs, and I came up and walked out of the port door, in what is called the companion.

Q. From what part of the ship did you make your observations of the river?

A. From the after part of the ship—from the stern.

Q. And you saw nothing but a small propeller on the port side?

A. On her port quarter—astern of us.

Q. Was she plainly discernable?

A. Yes; I could see her.

Q. Could you see her hull?

A. Yes, sir; I could see the outlines of her hull plain.

Q. Could you see her smoke-stack?

A. Yes; I could see that it was a small propeller.

Q. And did you not see her lights?

363 A. I saw no lights, at least I observed none.

Q. How was she heading?

A. She seemed to be heading for the left bank of the river, when I saw her.

Q. Could you tell her bow from her stern?

A. Yes; I could see by the shape that she was heading into the east bank, the left bank.

Q. And you cannot recollect whether you saw any lights?

A. No, sir; I did not observe any lights.

Q. Are you sure there were none?

A. I am not sure of that. If there were any, I did not observe any.

Q. You say that she was about 300 yards distant?

A. Yes; I should judge about that distance.

Q. Do you place any confidence in your estimate of distances, made under circumstances like that?

A. Yes; I have great reliance on it. Experience teaches us to judge of distances of that kind.

364 Q. Then, according to your statement, this vessel was some 300 yards nearer the left bank of the river than you were?

A. No; she was not nearer the left bank, but she was astern on our port quarter.

Q. Was she not nearer to the left bank?

A. She was astern 300 yards, but not nearer to the left bank.

Q. If she was astern of you on your port quarter, was not she nearer the left bank where she lay than you were where you lay?

A. She must have been some, but not 300 yards.

Q. Was not she considerably nearer the left bank, as she lay, than you were, as you lay?

A. Not a great deal; she may have been a little nearer.

Q. What do you mean by a "little," as you place great confidence in your estimate?

A. I should judge she may have been 20 or 30 yards nearer to the left bank than we were at the time.

365 Q. Then she must have been very slightly on your port quarter?

A. That is all she was; very little to our port quarter.

Q. Are you sure that she was at all on your port quarter?

A. Yes; I know she was.

Q. How far astern of you do you think she was?

A. I judge she was about 2 or 300 yards.

Q. And you think, that on a night such as this was, a vessel being 300 yards astern, that you could tell she is off your quarter within yards of her position?

A. I should judge so, because any deviation from the direct line will easily show.

Q. Was it a foggy night?

A. There was a very low fog when I came on deck; not one that I considered of any importance.

Q. How long did you remain on deck?

A. I remained on deck, I should think, 10 or 12 minutes.

Q. Did you converse with anybody?

366 A. No; except with one or two of the passengers who were on deck with me.

Q. And you then retired immediately again?

A. I went below again.

Q. Did you know what vessel that was that you saw astern of you?

A. I did not.

Q. You stated that the chart B appeared to you to be incorrect?

A. Yes.

Q. What do you mean by that?

A. That the course, the way the river runs, is not drawn properly, because the course of the river below the point, the straight reach, is ESE., whereas this B seems to be about NE., which is not correct.

Q. That was the only respect in which you criticized it in your testimony?

A. That is the only respect. I say it is not drawn according to the course of the river.

Q. When did you first hear of this suit?

367 A. The first thing I noticed, I think, I saw in the papers that a suit had been brought against the Juniata.

Q. When were you applied to to make this chart?

A. About a month ago.

Q. As I understand you, you were not on deck when the collision occurred?

A. I was not.

Q. And how did you come to make a representation of it?

A. According to Capt. Phillips; he placed himself in the position.

Q. Did you see Capt. Phillips that night?

A. I saw him before he retired to bed; before a room had been assigned to me.

Q. Where was he at the time?

A. Forward in the pilot-house.

Q. Did you have any conversation with him?

A. None. He bade me good night, and I told him to call me in time when we got to the passes.

Q. Have you shown that chart to Capt. Phillips?

A. He has seen it.

368 Q. He has seen it since you completed it?

A. Yes. He has seen it since I made the chart, and told him place himself in the position where I placed the Juniata.

Q. Then it is exclusively on his statement you represent the vessels as colliding?

A. Certainly.

Q. You do not know the course that the Juniata pursued up to the time of this collision?

A. No.

Q. You do not know the course that the Neafie pursued?

A. I do not.

Q. You do not know that that was the steamer Neafie you saw in the river?

A. No.

Q. You do not know that there was any boats in the river burning torches below where the collision occurred, because you went to bed?

A. No.

Q. And you were awoke from a sound sleep when the collision did occur, you being below stairs?

A. Yes; when I heard the thud.

369 Q. Did you notice anything unusual in the conduct of Capt. Phillips that night?

A. Nothing whatever.

Q. You are not prepared to say where the collision did occur in the river; whether it was in the middle of the river, or on the left bank, or on the right bank?

A. I could not say; I can only say the position she was in when I came on deck.

Q. All the rest is pure inference as to the actual position where the vessels collided?

A. Yes.

Q. And based on the statement of Capt. Phillips?

A. Based on the statement of Capt. Phillips as to his position, as it is there.

Q. When was it that Captain Phillips made these statements to you?

A. It was not until after we got down to the passes. I asked what boat got foul of him, and he said he did not know; he said that she came——

370 (Objected to his statement.)

He said that she had a flat-boat in tow and run right into him.

Q. Did he ever converse with you again about it until you made this chart?

A. No.

Q. How long a time must have elapsed since the collision before he made the statement to you, on receipt of which you drew that chart? How long a time elapsed between the collision and the time that he made this statement to you, upon which you made that chart? What length of time elapsed between the date of the collision and when Capt. Phillips gave you his statement of it?

A. He gave me a statement about 6 or 8 hours afterwards, when we got down to the passes.

Q. Did he converse with you again about it until you were called upon to make this chart?

A. No.

372 Q. How long ago since you were called upon to make this chart?

A. About a month ago.

Q. Did you ever see the "Neafie" since the collision?

A. I may have seen her in the river or in the distance, but never been on board of her.

Q. Was the "Juniata" proceeding down the river when you retired at full speed?

A. Yes, sir.

Q. She is a large steamship?

A. Yes, a very large steamship.

Q. And travels rapidly?

A. Yes, sir; she is a fast ship; pretty fast.

Q. Do you know anything about the manner in which she minds her rudder?

A. I have never piloted her, so I cannot judge.

Q. Were you not in the pilot-house that night?

A. I think I was in the pilot-house a few minutes before we left, or it may have been after.

372 Q. What did you charge for making a chart of that kind?

A. A small price—$35.

Q. You made it for McCreevy, agent of the "Juniata?"

A. Yes, sir.

Q. I think you stated that you did not visit the locality prior to completeing the chart?

A. Yes.

Q. You trusted to your knowledge of it?

A. Yes, sir.

Q. And you have entire confidence of your knowledge of it?

A. I have approximated for the distance. I was not asked to measure it, or I should have done so.

Q. Are you prepared to say that it is scientifically correct?

A. I think, as regards the course of the river, it is absolutely correct; as regards the width of the river, to some yards, I could not say without absolute measurement, but it is approximate.

373 Q. And how about the plantations and houses that you have located on the banks; is that only approximately correct?

A. Also they are approximately correct.

Q. You do not intend it to be scientifically correct?

A. I do not pretend it to be absolutely correct, because to do so I should have gone down and measured it, which I have not done. I was not requested to do so.

Q. How did you ascertain, in making the chart, the course of the river?

A. Because I passed that point about a thousand times up and down, and each time it was very necessary to observe the course of the river.

Q. And did you do it entirely from memory?

A. Certainly.

Q. Entirely?

A. No, not from memory. I know it from facts to be so, from having looked at the compass while running through there. We must

374 know every reach and how it runs, or we could not run any reach at all with safety a dark night. I could not get a license as pilot if I did not know that.

Q. Were you on deck when the Juniata passed any other vessel that night?

A. No; I was not on deck when she passed any other vessel—at least not that I took notice of. I staid in the after saloon a while, and con-

versed with some of the passengers that was going to Havana, before I retired.

Q. You think the Juniata was nearer the left bank than the right when you came on deck?

A. No; she was nearer the right bank than the left, if any.

Q. And how was she heading?

A. Right down the river when I noticed her; right down the reach.

Q. Was she not drifting rapidly?

A. No; she had been stopped some time. There was no current in the river.

Q. But she must have drifted to some extent?

375 A. I doubt very much whether there was more than half a knot current in the river at the time; so she could not have drifted far in ten minutes. She had been stopped before I got up out of my berth and came on deck.

Q. When they started the engines again, they proceeded rapidly down the river?

A. Yes, sir.

Q. Did they make any attempt to ascertain whether they did any damage or not?

A. No; I myself and others were waiting to see whether there was any damage done. I thought it was one of these slight collisions, and no damage done, as there was no claim for assistance.

Q. Do you think that by waiting in that position you could find out whether there was any damage done the other vessel if she was in the position you have described her and you drifting down the river?

A. We were within hailing distance if they asked for any assistance.

376 Q. No effort was made?

A. None that I know of.

Q. How long was it before the engines were started again?

A. I suppose about 15 minutes or 20 minutes until they were started.

Q. Was not the distance between you and the tug widening all the time?

A. To me it seemed as if the tug was going towards the left bank.

Q. Was not the distance between you and her widening?

A. Yes, sir; I presume it was.

Q. Did not you cease very soon to be in hailing distance of that tug?

A. I suppose so, but I could hail across the river there almost.

Q. And then did not the Juniata proceed at full speed down the river?

A. After she started ahead I presume she did. I went to bed and do not know what way she proceeded, and I never got up until I got to the passes.

377 Q. Did you hear any shouting on your vessel?

A. No. Nothing of the kind.

(Signed) LOUIS REINHARDT.

U. S. inspector's certificate to masters.

ISSUE NO. 1.—10TH ISSUE AS PILOT.

This is to certify that Louis Reinhardt has given satisfactory evidence to the undersigned, local inspectors of steam-vessel for the district of New Orleans, that he is a skillful master of steam-vessels and can be entrusted to perform such duties upon the waters of rivers flowing into the Gulf of Mexico and their tributaries in steamers of 1,000 tons and under;

also authorized to act as 1st pilot on the Mississippi River, to the pilot-station and along the coast, from outside the bar eastward to Pensacola and westward of the Rio Grande and Lake Ponchartrain, Borgne,
378 and tributaries, to and from New Orleans; and he is hereby licensed to act as such master on steam-vessels for the term of one year from this date.

Given under our hands this 4th day of Nov., 1871.

(Sig.) W. E. FLANDERS,
Inspector of Hulls.

100.

(Sig.) J. A. MOFFETT,
Inspector of Boilers.

Gross earnings of tug Neafie from Dec'r 1, 1870, *to March* 30, 1872.

1870.	Earnings for month of		Dec'r	$1,616	
1871.	"	"	Jan'ry	2,261	
"	"	"	Feb'ry, 21 days	1,278	
"	"	"	March	2,305	50
"	"	"	April	1,810	50
"	"	"	May	3,107	
"	"	"	June	1,504	
"	"	"	July	1,386	
"	"	"	August	1,102	
"	"	"	Sept'r, 7 days	268	
"	"	"	Novem'r 9 "	301	
"	"	"	Dec'r	1,188	50
1872.	"	"	Jan'y	1,091	
"	"	"	Feb'ry	818	
"	"	"	March	1,049	
"	"	"	April	743	

379 MAY 1ST, 1873.

G. PURSGLOVE *vs.* STR. JUNIATA. } 9852.

U. S. *vs.* SAME. } 9854.

The above causes were resumed, and, after hearing further evidence the same were continued till to-morrow at 11 a. m.

MAY 2D, 1873.

UNITED STATES *vs.* STR. JUNIATA. } 9854.

GEO. PURSGLOVE *vs.* SAME. } 9852.

These cases were resumed, and after hearing further evidence and argument the same were again continued till to-morrow at 11 a. m.

MAY 3RD, 1873.

UNITED STATES
vs.
STR. JUNIATA. } 9854.

GEO. PURSGLOVE
vs.
SAME. } 9852.

The above cases were resumed, and, after hearing the concluding argument of Randell Hunt, esq., the court took time to advise.

Order. Cause reinstated.

JUNE 18TH, 1873.

380 GEO. PURSGLOVE
vs.
STR. JUNIATA. } 9852.

UNITED STATES
vs.
SAME. } 9854.

For reasons orally assigned, it is ordered that the above cases be reinstated; that at the next term of the court a jury be called to whom shall be submitted the question whether the collision between the Juniata and the Neafie and her tow happened on the right or the left bank of the Mississippi River.

Order revoking above order.

DEC'R 16, 1873.

GEO. PURSGLOVE
vs.
STR. JUNIATA. } 9852.

UNITED STATES
vs.
SAME. } 9854.

On motion of the proctors for Pursglove, and on sugge'ting the desire to that effect of all parties to the above-styled cases, it is ordered that the direction of the court therein for a trial by jury be avoided and annulled.

Hearing and continuance.

JAN'RY 17, 1874.

381 GEO. PURSGLOVE
vs.
STR. JUNIATA. } 9852.

UNITED STATES
vs.
SAME. } 9854

These causes came up for trial.

n Hunt and J. R. Beckwith, for libellants.
ph Singleton and Browne for claimants.
after hearing argument, the same are continued till the 21st
. 11 a. m.

Submission.

JANUARY 22, 1874.

RSGLOVE
s.
UNIATA. } 9852.

STATES
.
E. } 9854.

ove cases were resumed, and after hearing further argument the
k time to advise.

Decree and order of reference.

JANUARY 26TH, 1874.

RSGLOVE
s.
UNIATA. } 9852.

STATES
.
IE. } 9854.

District court

asons orally assigned, considering that both vessels were at
ult, it is ordered, adjudged, and decreed that the damages
stained by the libellants by reason of the collision be divided.
That George Pursglove do recover from the steamship Juniata
of ten thousand dollars as personal damages, being one-half of
int claimed.
aid Pursglove do also recover from said steamship one-half of
age suffered by his tug Neafie, and that the United States re-
m said steamship one-half of the damage they have suffered by
of the scow and cement laden thereon.
rther ordered that it be referred to Mr. Commissioner Loew to
and report on the damage suffered by the Neafie and by the
nent.

Commissioner's report.—Filed Febr'y 5th, 1874.

URSGLOVE
vs.
UNIATA. } 9852.

STATES
s.
ME. } 9854.

Hon E. H. Durell, U. S. district judge for the district of Louisiana.

On the 26th January, 1874, your honor decreed that in the
atter of the collision between the steamship Juniata and the tug

Neafie, both vessels were at fault and that the damages sustained by the libellants by reason of said collision, be divided as follows:

That libellant Pursglove shall recover from the steamship Juniata:

1st. Ten thousand dollars as personal damages, which is one-half of the amount claimed.

2nd. That said Pursglove shall further recover from said steamship one-half of the damages sustained by his tug Neafie.

And lastly, that the United States shall recover from said steamship Juniata one-half of the damages they have suffered by the loss of the [illegible] and cargo in tow of the Neafie at the time of collision.

[illegible]r honor further ordered that the matter be referred to me to examine and report on the damages sustained by the Neafie and
384 the Government in the premises.

Upon due examination of the proofs in the cause I find and report as follows:

1st. Damage to the Neafie	$1,205	
2d. Damage to Gov't property	2,527	50
	3,732	50

One-half of which the Juniata is adjudged to pay, say $ as follows:

To Geo. Pursglove .. .

& to the United States

Respectfully submitted.

K. LOEW,

Judgment.

FEBRUARY 7TH, 1874.

GEO. PURSGLOVE *vs.* STR. JUNIATA. } 9852.

UNITED STATES *vs.* SAME. } 9854.

The above cases were called up to confirm the commissioner's report, and to enter up judgment in accordance with the decree of the court.

Carleton Hunt for libellant Pursglove. J. R. Beckwith, dist. atty.,
385 for the United States. Randolph, Singleton, & Browne for claimants.

When, after hearing counsel, it is ordered that the decree of the 26th of January, 1874, and the commissioner's report be so modified as to allow Geo. Pursglove ten thousand dollars in full compensation of all his damages in the premises; that, thus amended, the said decree and report be affirmed, and in accordance therewith it is now ordered, adjudged, and decreed by the court, that George Pursglove do have and recover from the steamship Juniata, her tackle, apparel, and furniture, the sum of ten thousand dollars. And that the United States do have and recover from the said steamship Juniata, her tackle, &c., the sum of twelve hundred and sixty-three $\frac{75}{100}$ dollars, and that claimants pay $\frac{1}{2}$ costs of suit.

And considering that said steamship was released from the seizure, and returned by the claimants on furnishing an admiralty stipula-
386 tion conditioned as the law directs; it is further adjudged and decreed that the Philadelphia and Southern Mail Steamship Company, claimants and owners of said steamship, by Pierce F. Hoxie, master and bailee, as principal, and C. Schneider, as surety on the release bond, be condemned in solido to pay the several amounts of the foregoing judgment, with one-half costs of suit.

Judgment signed Febr'y 13th, 1874.

E. H. DURELL, *Jud*

Petition of appeal by Pursglove.—Filed Febr'y 13th, 1874.

GEO. PURSGLOVE
vs.
STR. JUNIATA. } No. 9852.

U. S. dist. court. In admiralty.

The said libellant, George Pursglove, owner of the steam-tug Neafie, conceiving himself aggrieved by the final decree, entered herein Feb-
ruary 7th, 1874, and signed Febr'y 13th, 1874, whereby ten thou-
387 sand dollars damages were allowed libellant, ten thousand dollars adjudged to be by him borne and suffered, does hereby appeal from the said final decree to the next circuit court of the United States to be held in and for the district of Louisiana, and they pray that this appeal may be allowed, and that a transcript of the record, duly authenticated, may be sent to said circuit court. That said appeal may operate as a suspensive appeal and for general and equitable relief.

Order of appeal.—Granted Febr'y 13th, 1874.

GEO. PURSGLOVE
vs.
STR. JUNIATA. } 9852.

On motion of Carleton Hunt and Randall Hunt, proctors for libellant, and on their showing to the court that said libellant is desirous to appeal from the final decree herein rendered on 7th and signed 13th
388 February, 1874, whereby $10,000 damages were allowed libellant, and the remainder of such damages, $10,000, adjudged to be by him borne and suffered, and that he has this day filed his petition of appeal,

It is ordered by the court that said libellant have and be allowed an appeal from the said final decree, to operate as a supersedeas, returnable to the circuit court of the United States in and for the district of Louisiana, to be held in and for the said circuit, on the libellant giving bond in favor of the claimants and respondents, and all others herein interested, in the sum of $500, with good and solvent security, conditioned as the law directs.

Order of appeal for the United States.—Febr'y 16th 1874.

UNITED STATES
vs. } 9854.
ST'R JUNIATA.

Consolidated with—

GEO. PURSGLOVE
vs. } 9852.
ST'R JUNIATA.

389 On motion of J. R. Beckwith, United States atty., for libellant, and on suggesting to the court that the libellant herein feels aggrieved by the final judgment and decree therein, and is informed that there is error therein to the prejudice of said libellant:

Now, therefore, it is ordered that the said libellant herein, the said United States of America, be, and is hereby, allowed an appeal from said final decree, to the circuit court of the United States in and for the district of Louisiana, returnable, as the law directs, to the next regular term of said circuit court, and that the same be in all things allowed and to operate as a supersedeas, without bond or stipulation or security.

Appeal by claimants.—Filed Febr'y 18th, 1874.

GEO. PURSGLOVE
vs. } 9852.
ST'R JUNIATA.

To the Hon. E. H. Durell, judge of the district court of the United States, district of Louisiana.

390 The petition of the Philadelphia and Southern Mail Steamship Company, a duly incorporated body under the laws of the State of Pennsylvania, and domiciled in the city of Philadelphia, respectfully shows:

That a final decree has been rendered against it (the claimant in said suit) for a sum exceeding $50, and that claimant is aggrieved by said decree and is advised that there is error in the same, to the prejudice of petitioner, from which it cannot be relieved except by an appeal to the next U. S. circuit court held in this district; petitioner further shows that it desires to take a suspensive appeal from said decree to the next circuit court to be held in this district; petitioner further shows that it has already furnished bond, with good and solvent security, in the sum required by law and the rules of this court, to answer whatever judgment or decree that may be rendered against it in said suit, in this or in
391 any other appellate court, and that the only bond that can ever be legally required of this petitioner to entitle it to the appeal herein asked for is one for costs, in such sum as this court may order.

Wherefore, petitioners pray this hon. court to allow an appeal to the next circuit court to be held in this district, or returnable according to law, the same to operate as a supersedeas; that appellee be duly cited to answer said appeal, and that this hon. court will fix the amount of the bond to be furnished by petitioner for costs; and petitioner prays for all further general and equitable relief that may in the premises be granted.

(Signed) RANDOLPH, SINGLETON, & BROWNE,
For Claimants.

Order.

An appeal to operate as a supersedeas is allowed in this case, as prayed for, returnable to the circuit court of the United States for the district of Louisiana, on the 4th Monday of April, 1874, the appellants giving bond in the sum of $250, with surety, according to law.

February 18th, 1874.

392 (Signed) E. H. DURELL, *Judge.*

UNITED STATES *vs.* STEAMSHIP JUNIATA. } No. 9854.

Petition of appeal by claimant.—Filed February 18th, 1874.

To the honorable E. H. Durell, judge of the United States district court, district of Louisiana:

The petition of the Philadelphia & Southern Mail Steamship Company, a duly incorporated body under the laws of the State of Pennsylvania, & domiciled in the city of Philadelphia, respectfully shows:

That a final decree has been rendered against it (the claimant in said suit) for a sum exceeding $50, and that claimant is aggrieved by said decree and is advised that there is error in the same, to the prejudice of petitioner, from which it cannot be relieved except by an appeal to the next U. S. circuit court held in this district.

Petitioner further shows that it desires to take a suspensive ap-
393 peal from said decree to the next circuit court to be held in this district.

Petitioner shows that it has already furnished bond, with good and solvent security, in the sum required by law and the rules of this court, to answer whatever judgment or decree that may be rendered against it in said suit in this or in any other appellate court, and that the only bond that can now be legally required of this petitioner to entitle it to the appeal herein asked for is one for costs, in such sum as this court may order.

Wherefore petitioners pray this hon. court to allow it an appeal to the next circuit court to be held in this district, or returnable according to law, the same to operate as a supersedeas; that appellee be duly cited to answer said appeal, & that this honorable court will fix the amount of the bond to be furnished by petitioner for costs; and petitioners pray for all further general and equitable relief that may be in the
394 premises granted.

RANDOLPH, SINGLETON, & BROWNE,
For Claimants.

Order.

An appeal to operate as a supersedeas is allowed in this case, as prayed for, returnable to the circuit court of the U. S. for the district of Louisiana the 4th Monday of April, 1874, the appellants giving bond in the sum of $250, with surety, according to law.

February 18th, 1874.

(Sig'd) E. H. DURELL, *Judge.*

I hereby admit for the United States, libellant, full notice of the above appeal, and waive citation in appeal.

(Signed) J. R. BECKWITH, *U. S. Atty.*

FEB'Y 18TH, 1874.

UNITED STATES
vs.
ST'R JUNIATA. } No. 9854.

Acceptance of service.—Filed Feb'ry 18th, 1874.

395 An appeal from the decree in this *in this* cause having been taken by the libellants, returnable to the next regular term of the circuit court of the United States in and for said district of Louisiana, full notice of such appeal is hereby admitted, and all citations in appeal waived by the proctors for the claimants in this cause.

Dated New Orleans, Feb'ry 18th, 1874.

(Sig.) RANDOLPH, SINGLETON, & BROWNE,
Proctors for Claimants.

Appeal-bond of Geo. Pursglove.

UNITED STATES OF AMERICA,
District of Louisiana:

District court of the United States. In admiralty.

GEO. PURSGLOVE
vs.
STEAMSHIP JUNIATA. } No. 9852. Appeal-bond.

Know all men by these presents that we, George Pursglove, as principal, and Chauncey Tyler, as surety, are held and firmly bound unto the claimant and all others in interest in the sum of five
396 hundred dollars, to be paid to the said claimant and others; for the payment of which, well and truly to be made, in lawful money of the United States, we bind ourselves and each of us, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at New Orleans the 14 day of Feb'ry, 1874.

Whereas the above-named George Pursglove has appealed to the next term of the circuit court of the United States for the 5th circuit and district of Louisiana from a final judgment of the district court of the United States for said district, rendered against him on the 7 day of February, 1874, and signed on the 13 day of Feb'ry, 1874, in the above-entitled cause:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against him if he fail to make his appeal good, then this obligation
397 to be void; otherwise the same shall be and remain in full force and effect.

(Sig.) GEO. PURSGLOVE. [L. S.]
(") CHAUNCEY TYLER. [L. S.]

Signed, sealed, and delivered in the presence of—
K. LOEW, *Dy. Clerk.*

Chauncey Tyler, surety on the within appeal-bond, being duly sworn, says that *that* he resides in this city, and is worth the sum of $500, over and above all his just debts and liabilities.

(Signed) CHAUNCEY TYLER,
1[illegible]0 *Washing on street.*

Sworn to and subscribed before me this 14th day of February, 1874.
(Signed) K. LOEW, *U. S. C.*

Appeal-bond of Philadelphia and Southern Mail Steamship Co.

United States of America, district of Louisiana, district court of the United States. In admiralty.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATA, MASTER, & OWNERS. } No. 9852. Appeal-bond.

398 Know all men by these presents that we, Philadelphia and Southern Mail Steamship Company, as principal, and Edw'd A. Yorke & Co., as sureties, are held and firmly bound unto George Pursglove in the sum of two hundred and fifty dollars, to be paid to the said Purslove or his assigns; for the payment of which, well and truly to be made, in lawful money of the United States, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at New Orleans the 20' day of February, 1874.

Whereas the above-named Philadelphia and Southern Mail Steamship Company has appealed to the next term of the circuit court of the United States for the 5th circuit and district of Louisiana from a final judgment of the district court of the United States for said district, rendered against it on the 7th day of February, 1874, and signed on the 13th day of Feb'ry, 1874, in the above-entitled cause:

399 Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute its appeal to effect, and answer all damages and costs and satisfy whatever judgment may be rendered against it if it fail to make its appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

PHILADELPHIA & SOUTHERN MAIL STEAMSHIP COMPANY,
By RANDOLPH, SINGLETON & BROWNE, *Proctors.* [L. S.]
And EDW. A. YORKE & CO. [L. S.]
EDW. A. YORKE & CO., [L. S.]
Per J. D. HAMILTON, *Part.*

Signed, sealed, & delivered in the presence of—

Appeal-bond of the Philadelphia & Southern Mail Steamship Company.

United States of America, district of Louisiana, district court of the United States. In admiralty.

UNITED STATES
vs.
S. S. JUNIATA. } No. 9854. Appeal-bond.

Know all men men by these presents that we, Philadelphia & Southern Mail Steamship Company, as principal, and Edw. A.
400 Yorke & Co., as sureties, are held and firmly bound unto the United States in the sum of two hundred and fifty dollars, to be paid to the said United States, or assigns; for the payment of which,

well and truly to be made, in lawful money of the United States, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated at New Orleans the 20th day of Feb'ry, 1874.

Whereas the above-named Philadelphia and Southern Mail Steamship Company has appealed to the next term of the circuit court of the United States for the 5th circuit and district of Louisiana from a final judgment of the district court of the United States for said district, rendered against it on the 7th day of February, 1874, and signed on the 13th day of February, 1874, in the above-entitled cause:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute its appeal to effect, and answer all damages and costs and satisfy whatever judgment may be ren-
401 dered against it if it fail to make its appeal good, then this obligation to be void; otherwise the same shall be and remain in full force and effect.

PHILADELPHIA & SOUTHERN MAIL STEAMSHIP COMPANY,
By RANDOLPH, SINGLETON & BROWNE, *Proctors*, and
ED. A. YORKE & CO. [L. S.]
EDW. A. YORKE & CO.,
Per J. D. HAMILTON, *Part.* [L. S.]

Signed, sealed, & delivered in the presence of—

Agreement to use printed record.—Filed March 3d, 1874.

GEO. PURSGLOVE *vs.* S. S. JUNIATA. } 9852.

UNITED STATES *vs.* SAME. } 9854.

It is agreed that the printed pleadings and testimony in this case as used in the district court be likewise employed on appeal in the circuit court in lieu of the usual transcript; that the clerk of the district court be dispensed from making any transcript herein, except of the proceedings and testimony that had not already been printed.

402 (Signed) RANDOLPH, SINGLETON & BROWNE,
Proctors for Claimants.
(Signed) J. R. BECKWITH, *U. S. Atty.*
(Signed) CARLETON HUNT & RANDELL HUNT,
Proctors for Pursglove.

Clerk's certificate.

District court of the U. S., district of Louisiana.

I certify that the foregoing 109 pages manuscript, together with the 159 printed pages, do contain and form a correct and complete transcript of the original records in the consolidated cases of Geo. Pursglove vs. Steamship Juniata and the United States vs. The same, Nos. 9852 & 9854 of the docket of said court, including the proceedings had, documents filed, & evidence adduced on the trial of said causes, with

the exception of Plan R R, Plan B, and the rules and regulations for the government of pilots, which accompany the transcript in original.

The printed record is marked "Part 1st" and the manuscript "Part 2nd" of the transcript.

403 In faith whereof I hereto set my hand and the seal of our said court at New Orleans this 26th March, 1874.

[SEAL.] (Signed) K. LOEW,
Dy. Clerk.

Citation of appeal.—Issued February 13, 1874.

United States district court, district of Louisiana.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATA. } No. 9852.

The United States of America to the claimants of said steamship, greeting:

You are hereby cited and admonished to be and appear before the circuit court of the United States for the 5th circuit and district of Louisiana at its next term, to be holden in the city of New Orleans, State of Louisiana, to answer the appeal taken by George Pursglove in this cause, and that you show cause then and there, if any there be, why the judgment rendered against the said Pursglove on 7th February,
404 1874, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable E. H. Durell, judge, this 13th February, in the year of our Lord 1874, and the 98th of the American Independence.

(Sig.) E. H. DURELL,
Judge.

Marshal's return.

Received Febr'y 16th, 1874, by the U. S. marshal; and on the 19th day of same month and year served a copy of within citation of appeal on the S. S. Juniata, named herein, by handing the same to R. H. Browne, atty. for said steamship.

New Orleans, Febr'y 20th, 1874.

(Sig.) S. W. REED,
Dy. U. S. Marshal.

Citation of appeal.—Issued February 19*th*, 1874.

United States district court, district of Louisiana.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATA. } No. 9852.

405 The United States of America to George Pursglove, greeting:

You are hereby cited and admonished to be and appear before the circuit court of the United States for the 5th circuit and district of Louisiana at its next term, to the holden in the city of New Orleans, State of Louisiana, to answer the appeal taken by the claimants of the

S. Juniata in this cause, and that you show cause, then and there, if y there be, why the judgment rendered against the said steamship, &., on 7th February, 1874, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable E. H. Durell, judge, this 19th February, in the year of our Lord, 1874, and the 98th of the American Independence.

(Sig.) E. H. DURELL, *Judge.*

Marshal's return.

Received, Feb. 19, 1874, by the U. S. marshal, and on the 24th day of same month and year served a copy of within citation of appeal on George Pursglove, named herein, by handing the same to him in person.

New Orleans, Feby. 26, 1874.

(Sig.) S. W. REED,
Dy. U. S. Marshal.

406 *Document.*

Rules and regulations for the government of pilots of steamers navigating the rivers flowing into the Gulf of Mexico, and their tributaries. Adopted by the board of supervising inspectors June 12, 1871. To take effect on and after January 1, 1872, in compliance with the provisions of the act of Congress to provide for the better security of life on board of vessels propelled in whole or in part by steam, and for other purposes, approved February 28th, 1871.

RULE 1st. When steamers are approaching each other, the signal for passing shall be one sound of the steam-whistle to keep to the right, and two sounds of the steam-whistle to keep to the left. These signals to be made first by the ascending steamer. If the dangers of navigation, darkness of the night, narrowness of the channel, or any other cause, render it necessary for the descending boat to take the other side, she can do so by making the necessary signals, and the as-
407 cending steamer must govern herself accordingly. These signals to be observed by all steamers, either night or day.

RULE 2d. Should steamers be likely to pass near each other, and these signals should not be made and answered by the time such boats shall have arrived at the distance of eight hundred yards from each other, the engines of both boats shall be stopped; or should the signal be given and not properly understood from any cause whatever, both boats shall be backed until their headway shall be fully checked, and the engines shall not be again started ahead until the proper signals are made, answered, and understood. Doubts or fears of misunderstanding signals shall be expressed by several short sounds of the whistle in quick succession.

RULE 3d. When two boats are about to enter a narrow channel at the same time, the ascending boat shall be stopped below such channel until the descending boat shall have passed through it; but should
408 two boats unavoidably meet in such a channel, then it shall be the duty of the pilot of the ascending boat to make the proper signals, and when answered by the descending boat to lie as close as possible to the side of the channel the exchange of signals may have determined, as allowed by Rule 1, and either stop the engines or move them so as only to give the boat steerage way, and the pilot of the de-

scending boat shall cause his boat to be worked slow'y until he has passed the ascending boat.

RULE 4. When a steamer is ascending and running close on a bar or shore, the pilot shall in no case attempt to cross the river when a descending boat shall be so near that it would be possible for a collision to ensue therefrom.

RULE 5. No pilot of a descending steamer shall run down any island chute which is not the usual channel of the river, except such chutes as are designated by these rules, or may hereafter be designated by the board of supervising inspectors.

409 RULE 6. When any steamer, whether ascending or descending, is nearing a short bend or point, where, from any cause, a steamer approaching in an opposite direction cannot be seen at a distance of six hundred yards, the pilot of such steamer, when he shall have arrived within six hundred yards of that bend or point, shall give a signal of one long sound of his steam-whistle as a notice to any steamer that may be approaching; and should there be any approaching steamer within hearing of such signal, it shall be the duty of the pilot thereof to answer such signal by one long sound of his steam-whistle, when both boats shall be navigated with the proper precautions, as required by preceding rules.

RULE 7. When a steamer is running in a fog or thick weather, it shall be the duty of the pilot to sound his steam-whistle at intervals not exceeding one minute.

RULE 8. When steamers are running in the same direction, and the pilot of the boat which is astern shall desire to pass either side
410 of the boat ahead, he shall give the signal as in Rule 1, and the pilot of the boat ahead shall answer by the same signal, or if he prefer to keep on his course, he shall make the necessary signals, and the boat wishing to pass must govern herself accordingly; but the boat ahead shall in no case attempt to cross her bow, or crowd upon her course.

RULE 9. When boats are moving from their dock or berth and other boats are liable to pass from any direction toward them, they shall give the same signal as in case of boats meeting at a bend; but immediately after clearing the berth so as to be fully in sight, shall be governed by Rule 2.

RULE 10. All barges, when towed by steamers and navigated between sunset and sunrise, shall have their signal-lights, as required by law, placed in a suitable manner on the starboard bow of the starboard barge and on the port bow of the port barge, which lights shall not be less than ten feet above the surface of the water.

RULE 11. Steamers descending the Ohio and Mississippi Rivers,
411 between Louisville, Ky., and New Orleans, La., shall not run down any island chute, either by day or night, except those herein or hereinafter designated, unless such chutes are the usual channel of the river.

RULE 12. The following island-chutes may be navigated by descending steamers on the Ohio River, between Louisville, Ky., and Cairo, Ill., when the river shall be sufficiently high for them to do so with safety, viz: Blue River Island, Diamond Island, Golconda Island, Sister Islands, Stewart's Island, and Cumberland Island, either by day or night, and Wabash Island chute by daylight only.

RULE 13. The following island-chutes on the Mississippi River, between Cairo and New Orleans, may be navigated by descending steamers during daylight, when the river shall be sufficiently high for them to

do so with safety, viz: Islands Nos. 8, 34, 35, 40, 41, (called Paddy's Hen,) 46, (or President Island,) 65, 75, (or Ozark Island,) 76, 93, 97, 109, (or Palmyra Island,) 110, (or Big Black Island,) 116, (or Glasscock's Island,) or 123, (or Profit's Island.)

RULE 14. The following island-chutes may be navigated by
412 descending steamers during the night, when the river may be sufficiently high for them to do so with safety, viz: Islands Nos. 8, 34, 41, (or Paddy's Hen,) 65, 76, 93, 97, 109, (or Palmyra Island,) 110, (or Big Black Island,) 116, (or Glasscock's Island.)

RULE 15. Ascending steamers are not prohibited from running any island-chutes.

RULE 16. Signal-lights for steamers under way are provided by law as follows, the same to be carried between sunset and sunrise:

For ocean steamers and steamers carrying sail, a bright white light at the foremast head, to throw the light through ten points of the compass on each side of the ship, viz, from right ahead to two points abaft the beam, and to be visible at least five miles. On the starboard side a green light, and on the port side a red light, each to throw the light through ten points of the compass on their respective sides, viz, from right ahead to two points abaft the beam, and to be visible at least two miles.

These colored lights are to be fitted with inboard screens, projecting
413 at least three feet forward from the light, to prevent them from being seen across the bow.

For steamers navigating waters flowing into the Gulf of Mexico, a red light on the outboard side of the port smoke-pipe, and a green light on the outboard side of the starboard smoke-pipe; these lights to show both forward and abeam on their respective sides.

For coasting steamers and those navigating bays, lakes, or other inland waters, other than ferry-boats and those above provided for, the red and green side lights as prescribed for ocean steamers, and a central range of two white lights, the after light being carried at an elevation of at least fifteen feet above the light at the head of the vessel; the head light to show through twenty points of the compass, namely, from right ahead to two points abaft the beam on either side of the vessel, and the after light to show all around the horizon.

For steamers towing other vessels, the colored lights will be the same as prescribed for ocean steamers, and two white mast-lights shall
414 also be carried vertically, to distinguish them from other steamers; the white lights to show through twenty points of the compass, viz, from right ahead to two points abaft the beam on either side of the vessel; white lights shall also be placed on the extreme outside of the tow, on either hand, and also on the extreme afterpart of the same.

RULE 17. A bright white light, not exceeding twenty feet above the hull, shall be exhibited by all steamers when at anchor, between sunset and sunrise, in a globular lantern of eight inches diameter, so placed as to show a good light all around the horizon.

RULE 18. Steam ferry-boats with two chimneys shall in all cases carry the same signal lights as passenger-steamers.

RULE 19. All other steamers, ferry or otherwise, having but one chimney shall have brackets securely fastened to each side of the same, so as to carry the red and green lights, the same as passenger-steamers.

RULE 20. When a license of a pilot is suspended or revoked,
415 he shall not act as steersman, nor take any part in the navigation

of any steamer during the time for which his license shall have been suspended or revoked.

JOS. BELKNAP,
Supervising Inspector-General.

SAMUEL GUTHRIE, *First District*,
ADDISON LOW, *Second District*,
JOHN MEUSHAW, *Third District*,
FRANK BURNETT, *Fourth District*,
CHARLES L. STEPHENSON, *Fifth District*,
SAMUEL HOUSTON, *Sixth District*,
JOHN S. DEVENNY, *Seventh District*,
PETER J. RALPH, *Eighth District*,
ASAPH S. BEMIS, *Ninth District*,
WILLIAM ROGERS, *Tenth District*,
Supervising Inspectors.

Approved June 15th, 1871.

GEO. S. BOUTWELL,
Secretary of the Treasury.

(Here follows diagram marked page 415.)

416 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.
April term, 1874.

NEW ORLEANS, *Tuesday, May* 19, 1874.

Court met pursuant to adjournment. Present, Hon. J. P. Bradley, asso. justice Supreme Ct.; present, Hon. W. B. Woods, circuit judge.

Before Mr. Justice Bradley.—Hearing of cause and order continuance.

Extract from minutes.

MAY 19TH, 1874.

GEORGE PURSGLOVE, UNITED STATES
vs.
STEAMSHIP JUNIATA. } No. 7206.

This cause came on to be heard on the transcript of the record from the district court of the United States for this district, Randell and Carleton Hunt for Pursglove, Randolph, Singleton, & Browne for steamship.

And after hearing the pleadings, evidence, and argument, the same is continued till to-morrow at 10 a. m.

417 *Hearing and submission of cause.*

Extract from the minutes.

MAY 20TH, 1874.

GEORGE PURSGLOVE, UNITED STATES
vs.
STEAMSHIP JUNIATA. } No. 7206.

This cause was resumed, and after hearing further argument the court took time to advise.

Decree from judgment-book.

MAY 22D, 1874.

Circuit court of the United States, fifth circuit and district of Louisiana, April term, 1874.

NEW ORLEANS, *Friday, May 22d*, 1874.

Court met pursuant to adjournment. Present, Hon. J. P. Bradley, asso. justice Supreme Ct. Hon. W. B. Woods, circuit judge.

GEORGE PURSGLOVE, UNITED STATES *vs.* STEAMSHIP JUNIATA. } No. 7206.

For the reasons orally assigned it is ordered that the decree of
418 the district court in this cause be affirmed, and it is now ordered, adjudged, and decreed by this court that George Pursglove do have and recover from the steamship Juniata, her tackle, apparel, and furniture, the sum of ten thousand dollars, and that the United States do have and recover from the said steamship Juniata, her tackle, &c., the sum of twelve hundred and sixty-three $\frac{75}{100}$ dollars, and that claimants pay half of costs of suit.

And considering that said steamship was released from seizure and restored to the claimants on furnishing an admiralty stipulation conditioned as the law directs,

It is further adjudged and decreed that the Philadelphia and Southern Mail Steamship Co., claimants and owners of said steamship, by Peirce F. Hoxie, master and bailee as principal, and C. Schneider as surety on the release-bond, be condemned in solido to pay the several amounts of the foregoing judgment, with one-half costs of suit.

Decree rendered May 22d, 1874.

Decree signed May 22d, 1874.

(Signed)

JOS. P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

419 *Motion by the U. S. for appeal and order allowing same.*

Extract from the minutes.

JUNE 16TH, 1874.

Circuit court of the United States, district of Louisiana.

THE UNITED STATE' *vs.* THE STEAMSHIP JUNIATA, TACKLE, &C., consolidated with Pursglove *vs.* same. } No. 7206. In admiralty on appeal from dist. court.

On motion of J. R. Beckwith, U. S. atty. for the district of Louisiana, and on suggesting to the court that the libellant herein, the United States of America, feels aggrieved by the final decree made and entered in this cause by the said circuit court upon the hearing and trial of the said appeal herein from the district court of the United States in and for the district of Louisiana, and that there is error in said decree to the prejudice of said libellant,

It is ordered that the said libellant, the United States of Ameri-
420 ca, be, and hereby is, allowed an appeal from said decree to the Supreme Court of the United States, returnable to and at the next regular October term of said Supreme Court to be holden at the city of Washington in due course of law; and that said appeal be allowed without bond or security for costs and damages on said appeal.

Motion for appeal by claimants, the Philadelphia & Southern Steamship Co., and order allowing the same. Entered and filed June 18th, 1874.

United States circuit court, fifth circuit, district Louisiana, April term, 1874.

GEORGE PURSGLOVE & UNITED STATES *vs.* STEAMSHIP JUNIATA. } No. 7206.

On motion of Randolph, Singleton, and Browne, proctor' for the Philadelphia and Southern Steamship Company, claimants in the above-entitled suits (consolidated and tried together) and C.
421 Schneider, the security given for the release of said steamship, seized in the said suits in the United States district court, district of Louisiana, and on showing that said causes were instituted in the United States district court, district of Louisiana, in a cause of admiralty jurisdiction, civil and maritime; and therein a judgment and decree was entered against these movers in solido in each of said suits or causes of action; that said causes were removed from said United States district court by appeals to this honorable court, where the same were decided by this honorable court on the 22d of May last, during the present term of this court; that the amount in dispute in each of said suits far exceeds the sum of two thousand dollars; that a final judgment has been rendered in each of said causes against these movers in solido, in which they are advised there is error to their prejudice from which they cannot be relieved except by an appeal to the Supreme Court of the United States; and on fur-
422 ther showing that these movers desire to appeal suspensively from each of said judgments to the next term of the United States Supreme Court to be held in Washington City, District of Columbia, commencing in October next; and on showing that these claimants have given a stipulation in each of said causes with good and solvent security in a sum fixed by the court in a much larger amount than is necessary to cover libellant's demand in each case, (on the delivery to them of said steamship when attached in each of said suits by process issued out of said district court,) to abide by and pay the money awarded by the final decrees rendered by the said district court or the appellate court; and said stipulations are still in full force & effect, and the sureties thereon are abundantly good and solvent, and able to pay any decree or judgment that may be rendered in said suits on appeal; and no other bond need be given on these appeals than for costs thereof.

It is therefore ordered by the court that the movers herein be
423 allowed an appeal from the judgment rendered in each one of said causes to the Supreme Court of the United States, returnable in said Supreme Court at the next term thereof, and that said appeals do operate as a supersedeas in each of said cases upon the appellants now furnishing & filing a bond, with good and solvent security in each of said cases, in the sum of five hundred dollars, conditioned as the law directs.

Appeal-bond.—Filed June 18th, 1874.

UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana.

GEORGE PURSGLOVE *vs.* STEAMSHIP JUNIATA. } No. 7206. Appeal-bond.

Know all men by these presents that we, the Philadelphia and Southern Mail Steamship Company and C. Schneider, as principals,
424 and Edward A. Yorke, as surety, are held and firmly bound unto George Pursglove, his heirs, executors, administrators, and assigns, in the sum of five hundred dollars, to be paid to the said George Pursglove; for the payment of which, well and truly to be made in lawful money of the United States of America, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated at New Orleans, Louisiana, the 18th day of June, 1874.

Whereas the above-named Philadelphia and Southern Mail Steamship Company and C. Schneider have this day presented a motion to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for an appeal from a final judgment rendered against them in the above-entitled and numbered suit on the docket of said circuit court, to the next term of the Supreme Court of the United States of America:

Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect,
425 and answer all damages and costs, and satisfy whatever judgment may be rendered against them if they fail to make their appeal good, then this obligation to be void; otherwise the same shall remain in full force and effect.

(Signed) PHILADELPHIA AND SOUTHERN MAIL STEAMSHIP CO.,
Per EDWARD YORKE, *Agt.*
(Signed) C. SCHNEIDER.
(Sig.) EDW. A. YORKE.
Witness:
CHARLES B. SINGLETON.

Appeal-bond.—Filed June 18, 1874.

United States of America, circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana.

UNITED STATES *vs.* STEAMSHIP JUNIATA. } No. 7206. Appeal-bond.

Know all men by these presents that we, the Philadelphia and
426 Southern Mail Steamship Company and C. Schneider, as principals, and Edward A. Yorke, as surety, are held and firmly bound unto the United States and assigns in the sum of five hundred dollars to be paid to the said United States, for the payment of which, well and truly to be made in lawful money of the United States of America, we

bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated at New Orleans, Louisiana, the 18th day of June, 1874.

Whereas the above-named Philadelphia and Southern Mail Steamship Company and C. Schneider have this day presented a motion to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for an appeal from a final judgment rendered against them in the above entitled and numbered suit on the docket of said circuit court, to the next term of the Supreme Court of the United States of America:

427 Now, therefore, the condition of this obligation is such that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs, and satisfy whatever judgment may be rendered against them if they fail to make their appeal good, then this obligation to be void; otherwise the same shall remain in full force and effect.

(Signed) PHILADELPHIA AND SOUTHERN MAIL STEAMSHIP COMPANY,
Per E. A. YORKE, *Agt.*
(") C. SCHNEIDER.
(") EDW. A. YORKE.

Witness: CHARLES B. SINGLETON.

Petition for appeal by Geo. Pursglove, and order allowing the same.—Filed June 19th, 1874.

GEO. PURSGLOVE, UNITED STATES, *vs.* STEAMSHIP JUNIATA. } No. 7206. In admiralty. U. S. circuit court, 5th judicial district.

To the honorable the circuit court of the United States within the circuit and district of Louisiana.

428 The petition of Geo. Pursglove, libellant in the above-entitled cause, with respect, shows:

That petitioner is aggrieved by the final judgment and decree of the court herein, rendered May 22d, 1874, and signed on same day; and that petitioner is informed and believes that the same is erroneous.

Wherefore petitioner prays to be allowed an appeal from said judgment and decree to the Supreme Court of the United States; and that such appeal operate as a supersedeas on giving bond conditioned according to law with good and solvent surety in the sum of $500.

And as in duty bound, &c.

(Signed) CARLETON HUNT,
(") RANDELL HUNT,
Proctors for Libellant.

Order.

An appeal to operate as a supersedeas is allowed in this case as prayed for and according to law returnable to the Supreme Court of the
429 U. S. the 2nd Monday of October next, the appellant giving bond and security in the sum of $500.

June 19, 1874.

(Signed) E. H. DURELL,
Judge.

Bond for appeal.—Filed June 26th, 1874.

United States of America. United States circuit court.

GEO. PURSGLOVE *vs.* STEAMSHIP JUNIATA. } No. 7206.

Know all men by these presents that we, George Pursglove as principal, and Chauncey Tyler as surety, are held and firmly bound, jointly and severally, unto the clerk of the circuit court for the fifth judicial circuit and district of Louisiana, and all others interested, including the claimants, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said clerk of the
430 circuit court for the fifth judicial circuit and district of Louisiana, & all others interested, including the claimants, heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, *and each of us by himself*, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the twenty-sixth day of June, in the year of our Lord eighteen hundred & seventy-four.

Whereas George Pursglove has this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for a suspensive appeal to the Supreme Court of the United States from a final decree rendered in this honorable court, in the case of Geo. Pursglove vs. Steamship Juniata, rendered May 22nd, 1874, and signed on the same day, numbered 7206 of the docket of said circuit court:

431 Now, the condition of the above obligation is, that we, the above-bounden Geo. Pursglove and Chauncey Tyler, will well and truly pay to the said clerk of the circuit court for the fifth judicial circuit & district of Louisiana, and all others interested, including the claimants, all such damages as they, or any or either of them, may recover against us, in case it should be decided that the said appeal was wrongfully obtained.

Signed, sealed, and delivered in the presence of—

(Signed) GEORGE PURSGLOVE. [L. S.]
(") CHAUNCEY TYLER. [L. S.]

432 United States of America. Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 431 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the consolidated cases of George Pursglove vs. Steamship Juniata, United States vs. Steamship Juniata, No. 7206 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 25th day of August, A. D. 1874.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, E. H. Durell, United States judge for the district of Louisiana, do

certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 25th day of August, A. D. 1874.

E. H. DURELL,
Judge.

433 U. S. circuit court.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATA. } No. 7206.

To the honorable the circuit court of the United States within and for the circuit and district of Louisiana.

The petition of George Pursglove, libellant in the above-entitled cause, with respect shows: That petitioner is aggrieved by the judgment of the court therein rendered, and is advised and believes there is error in the same.

Wherefore petitioner prays to be allowed to appeal from said judgment to the Supreme Court of the United States, and that such appeal operate as a supersedeas in consideration of the bond conditioned according to law with good and solvent security in the sum of five hundred dollars ($500) on file herein; and as in duty bound, &c.

(Signed) CARLETON HUNT,
(") RANDALL HUNT,
Proctors for Libellant.

Order.

An appeal to operate as a supersedeas is allowed in this case as prayed for, returnable to the Supreme Court of the United States
434 on the second Monday of October, 1876.

New Orleans, March 25th, 1876.

(Signed) W. B. WOODS, *Judge.*

CLERK'S OFFICE.

A true copy of the original on file in this office.
New Orleans, March 25th, 1876.
[SEAL.] F. B. VINOT,
Dy. Clerk.

435 UNITED STATES OF AMERICA:

Know all men by these presents that we, George Pursglove, as principal, and Chauncey Tyler, as surety, are held and firmly bound, jointly and severally, unto the clerk of the circuit court for the fifth judicial circuit and district of Louisiana, and all others interested, including the claimants, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said clerk of the circuit court for the fifth judicial circuit and district of Louisiana, and all others interested, including the claimants, heirs, executors, administrators, and as-

signs; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the twenty-fifth day of March, in the year of our Lord eighteen hundred and seventy-six.

Whereas George Pursglove has this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for a suspensive appeal to the Supreme Court of the United States from a final decree rendered in this honorable court in the case of George Pursglove vs. Steamship Juniata, rendered May 22nd, 1874, and signed on the same day, numbered 7206 of the docket of said circuit court:

Now, the condition of the above obligation is that we, the above-bounden George Pursglove and Chauncey Tyler, will well and truly pay to the said clerk of the circuit court for the fifth judicial circuit & district of Louisiana, and all others interested, including the claimants, all such damages as they or either of them may recover against us in case it should be decided that the said appeal was wrongfully obtained.

(Signed) GEORGE PURSGLOVE. [L. S.]
(Signed) CHAUNCEY TYLER. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) F. B. VINOT.
R. B. HOLLY.

Approved:
(Signed) W. B. WOODS,
U. S. Judge. [L. S.]

436 DISTRICT OF LOUISIANA:

Chauncey Tyler, surety on the within bond, being duly sworn, says that he resides in the city of New Orleans, Louisiana; that he is worth the sum of five hundred dollars, over and above his debts and liabilities and property exempt from execution.

(Signed) CHAUNCEY TYLER.

Subscribed and sworn before me this 25th day of March, 1876.
(Signed) F. B. VINOT,
Comm'r of U. S. Circuit Court.

CLERK'S OFFICE.

I certify the foregoing to be a true and correct copy of the original bond filed in this office March 25th, 1876.

Witness my hand and seal of said court at New Orleans this 25th day of March, A. D. 1876.

[SEAL.] F. B. VINOT.
Dy. Clerk.

(Indorsed:) Louisiana C. C. U. S., No. 951. George Pursglove, appellant, vs. The Steamship Juniata, &c., et al. Filed 8th April, 1876.

(Indorsed on cover:) Louisiana C. C. U. S. No. 129. The United States, appellants, vs. The Philadelphia & Southern Mail Steamship Company, claimants of the steamship Juniata, &c. No. 130. The Philadelphia & Southern Mail Steamship Company, claimants of the steamship Juniata and C. Schneider, appellants, vs. The United States. Filed 13th October, 1874. No. 628. George Pursglove, appellant, vs. The Steamship Juniata, &c., et al. Filed 8th April, 1876.

1* October term, 1875. Supreme Court of the United States.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATTA, PHILA. & S. M. S. SHIP Company. } No. 951.

And now, this 17th day of April, 1876, Durant and Hornor and Carlton Hunt, attorneys for plaintiff and appellant, George Pursglove, move the court for an order to take further proof in this case under rule 12, on the grounds following:

First. Because this is a case of maritime & admiralty jurisdiction.

Second. Because the affidavits of Doctor D. C. Holliday, and George Pursglove, which affidavits are made part hereof, show good and valid reasons for taking further proofs herein. They are lettered "P" and "Q."

2* And that this motion be made returnable as the rules of court direct.

DURANT & HORNOR,
CARLETON HUNT,
For Libellant.

I hereby certify that a copy of the above was, this 15th April, 1876 at about 8 o'clock p. m., dropped by me in the post-office, prepaid, addressed to C. B. Singleton, counsellor, New Orleans, La.

Washington, D. C. April 15, 1876.

J. E. TRUDEAU.

(Endorsed:) No. 951. October term, 1875. U. States Supreme Court George Pursglove vs. Steamship Juniata, Phila. and S. M. S. Ship Company.

Motion for an order to take further proof, with documents, P and Q.

3* U. S. ct. ct.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATA. } No. 7206.

George Pursglove, being duly sworn, deposes that he is the libellant in the above-named cause; that Daniel C. Holliday, a doctor of medicine, who resides in this city, is a material witness in libellant's behalf; that the said Holliday has professional acquaintance with and knowledge of the present condition of libellant, and as resulting from the personal injuries herein complained of and the tort of the respondent, and that the testimony of said Holliday in the Supreme Court is necessary to prevent a failure of justice in the premises.

(Signed) GEORGE PURSGLOVE.

4* Sworn to and subscribed before me this 27th May, A. D. 1875.

[SEAL.] (Signed) J. A. CHARBONNET,
Dy. Clerk U. S. Dist. Court, La.

U. S. circuit court, district of Louisiana, clerk's office.

I certify the foregoing to be a true copy of the original affidavit filed

in the above-entitled suit on the 28th May, 1875, and which accompanied the motion made on the same date for a commission returnable in the Sup. Court of the U. S.

Witness my hand and seal of said court, at New Orleans, this 15th day of January, A. D. 1876.

[SEAL.] F. B. VINOT,
Dy. Clerk.

(Endorsed:) U. S. ct. ct. No. 7206. Geo. Pursglove vs. St'ship Juniata.

Affidavit Q.

5* U. S. ct. ct.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATA. } No. 7206.

Daniel C. Holliday, being sworn, deposes that he is a resident of New Orleans, and, as a practitioner of medicine and surgery, was examined in this case under a commission returnable in the hon. Supreme Court of the United States.

That it was impossible for him to give his said testimony on the trials in the district and circuit courts, and that it was impossible to ascertain, at the time of the said trials in the district and circuit courts, the real extent and character of the personal injuries suffered by the libel-
6* lant, George Pursglove, and to recover damages for which this suit is brought and is now pending.

That on the trial in the district court, another scientific witness, Doctor Samuel Logan, professor of anatomy in the medical department of the University of Louisiana, was also examined touching the said injuries of the libellant, and that Doctor Logan and affiant both agreed that the case of the libellant was at that time an inscrutable one, and both declined to give a prognosis of the same.

That when affiant was examined in the circuit court, the unfavorable symptoms in the libellant's case had made some progress, but had not fully developed, and it was impossible to do more than state as
7* affiant then did, such unfavorable and very gradual progress, and that the libellant would probably not recover.

That when affiant's testimony to be returned to the Supreme Court was taken, he then had the first opportunity to describe the extent of the injury herein complained of, & did so.

That the reason why affiant had no opportunity thus to testify as to the personal injury done to George Pursglove, and herein complained of, for damages, is one inseparable from such a case.

That the said injury resulted from a fall and blow on the head, producing concussion of the brain & spinal cord and garbling of the
8* functions. That such cases are insidious and most inscrutable in the beginning; that injuries appearing at first only slight, advance by degrees, as did the libellant's, and become most dangerous; and that there is a great variation in the period, in some cases the most positive symptoms developing immediately after the occurrence of the injury, in others not until months, and even years, have elapsed, when at last a complete and permanent change in mental and bodily condition is effected, and the nervous power broken down and vitally impaired.

And affiant further deposes, that the cases are thus treated in all scientific works, and that the case of George Pursglove, the libellant, belongs to the class here secondly referred to.

DAN'L C. HOLLIDAY, *M. D.*

9* Sworn to and subscribed to before me this 20th day of January, 1876, at the city of New Orleans.

[SEAL.] EMMET D. CRARY,
Commr. U. S. Cir. Ct. Dist. of La.

(Endorsed:) No. 7206. U. S. circuit court. George Pursglove vs. Steamship Juniata. Affidavit of D. C. Holliday, M. D. P.

10* Supreme Court of the United States. No. 951. October term, 1875.

GEORGE PURSGLOVE, APPELLANT,
vs.
THE STEAMSHIP JUNIATA.

The motion in this case to make the deposition of Dr. D. C. Holliday, taken since the appeal, a part of the record is granted upon the shewing now made.

1st May, 1876.

11* U. St. Ct.

GEO. PURSGLOVE
vs.
STEAMSHIP JUNIATA. } 7206.

U. S.
vs.
SAME. } In admiralty.

Interrogatories to be propounded to Daniel C. Holliday, M. D., a witness for the libellant, George Pursglove, in this case, taken under commission by order of the honorable the judges of the circuit court of the U. S. for the fifth judicial circuit and district of Louisiana, and pursuant to the order of the said court, returnable to the Supreme Court of the U. S. on—

1st. Have you seen George Pursglove, the libellant, in this suit'
12* from time to time since you last testified in this cause; and have you observed him and considered his case?

2nd. If you answer yes to the first interrogatory, state what his present condition of health is, and whether that condition has been bettered or otherwise since you last examined him and testified? How is his power of locomotion? Is there any lesion or garbling of functions in his case; and, if so, what is it, and how is it connected with the accident and injury done him by respondents, and as to which you have already testified.

3rd. If you say that the said Geo. Pursglove is still suffering from the effects of such injury, in answer to the second interrogatory,
13* please state whether in your professional opinion he will recover or not?

And, if you think he will not, why you think so, and how his said injuries are to be described, and whether his condition has gradually changed or not; and, if so, state what that change is, how it has taken place, and how it will result?

4th. How does the condition of the libellant George Pursglove compare now with what it was before the injury complained of? How does his physical activity and usefulness compare now with what they were then, and how does his mental condition compare now with what it was then, and is there now going on in the case of the said George Pursglove any change of condition, physical or mental, or both; and, if so, what is to be the future course of such change of condition; whether
14* physical or mental or both?

5th. If you say that any such change as is inquired of in the fourth interrogatory has taken place in George Pursglove, the libellant, state the cause of it, and the manner in which that cause has operated.

6th. State, if you please, the length of time you have been a practitioner of medicine and surgery; of what college you are a graduate, and whether or not your experience has been considerable.

(Signed) CARLETON HUNT &
RANDELL HUNT.
Proctors for Libellant, George Pursglove.

15* Cross-interrogatories.

Claimants propound the following cross-interrogataries to be answered by Doctor Daniel C. Holliday, witness for libellant:

1st X-interrogatory. About how often have you seen the libellant since you last testified in this case? State as nearly as you can. How many times have you as a physician examined him since you last testified in this case? State as nearly as you , and the date of each examination.

2nd X-interrogatory. Have you not had a large practice during the last ten years? Has there not during that time been a very great increase in diseases effecting the nervous system, the brain, and the spinal chord, and other diseases of a like nature, such as paralysis,
16* palsy, softening of the brain, &c.? Have you not frequently seen these diseases, in one form or another, suddenly manifest themselves in persons up to that time considered in good health?

How do you account for the frequent manifestation of such diseases of late?

What is there in the state of trade and commerce, in society, in the condition of our State and city governments, in what is commonly called hard times, to produce diseases of the character above named? Give your views fully upon the matters contained in this question.

3d X-interrogatory. What do you mean by "garbling or lesion of functions" wher applied to disease?

4th X-interrogatory. Have you stated in answer to the direct interrogatories that you have found in the condition of the libellant
17* any lesion or garbling of functions in his case? If so, to what extent? How is the same indicated?

5th X-int'y. Have you stated in your answers in chief that the lesion or garbling of functions in libellant's case is alone attributable to the injuries he received at the time of the collision with steamship Juniata, and for which you treated him? Have you not seen in one or more patients the same or similar lesion or garbling of functions without being able to assign any adequate cause for the same? Can you state upon your oath that you know every cause capable of producing

such a condition as libellant is now in? If you do not know every cause that can possibly produce such a state of affairs, how can you state that libellant's condition is alone attributable to the injuries caused by the collision with steamship Juniata?

18* 6th X-interrogatory. Has not trade and commerce at this port greatly fallen off and diminished during the last five years? Has not the demand for tugs and such class of vessels proportionally fallen off and diminished? May not this state of affairs have contributed more or less to have brought about the present condition of the libellant? If yea, to what extent would it have thus contributed? If libellant had not been injured by the said collision, can you state that he would not have had any of his present unfavorable symptoms?

7th X-interrogatory. You know the nature and object of this suit; you will, therefore, state any fact or circumstance that will be favorable to the owners of the steamship Juniata as fully and as much in detail as though you were especially interrogated in regard thereto.

19* (Signed) RANDOLPH, SINGLETON & BROWNE,
Proctors for Claimants.

CLERK'S OFFICE.

True copies of the originals on file.
New Orleans, June 16th, 1875.
[SEAL.] F. B. VINOT,
D'y Clerk.

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To William Grant, a commissioner of the circuit court of the United States for the district of Louisiana:

Know ye, that reposing special trust and confidence in your in-
20* tegrity and ability, we hereby authorize and require you that you call and cause to come before you Daniel C. Holliday, M. D., and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein George Pursglove is libellant and the steamship Juniata defendant, in the case entitled George Pursglove vs. Steamship Juniata, and the United States vs. Steamship Juniata.

And the same examination, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to the Supreme Court of the United States without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Morrison R. Waite, Chief-Justice of the
21* United States, at the city of New Orleans this 16th day of June, anno Domini 1875, and the 99th year of the Independence of the United States of America.

[SEAL.] F. B. VINOT,
D'y Clerk.

This commission is herewith returned duly executed, as will appear by my certificate annexed, July 1, 1875.

WM. GRANT, *Comr.*

(Endorsed:) United States circuit court. No. 7206. George Pursglove vs. Steamship Juniata. Commission. Un'ted States vs. Steamship Juniata.

22* United States circuit court for the 5th circuit & district of Louisiana. In admiralty.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATA. } No. 7206.

U. S.
vs.
SAME.

UNITED STATES OF AMERICA,
District of Louisiana:

Be it remembered that on the 26th day of June, A. D. 1875, at New Orleans, in said district of Louisiana, before me, William Grant, a commissioner of the United States circuit court of the fifth circuit & district of Louisiana, personally appeared Daniel C. Holliday, whom I caused to be summoned before me, to be examined as a witness in the above-entitled cause, by virtue of the annexed commission to me directed
23* out of the circuit court of the United States for the fifth circuit & district of Louisiana, on the interrogatories and cross-interrogatories annexed to said commission.

And the said Daniel C. Holliday, being by me first carefully examined, cautioned, & sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say, in answer to said interrogatories and cross-interrogatories as follows, vize:

To the 1st interrogatory he saith: Daniel C. Holliday, M. D. I have.

To the 2nd interrogatory he saith: The condition of Pursglove's health at the present time is apparently good. It is somewhat altered but not improved since I last testified. His power of locomotion is not much improved, if any. There is a generally purposeless expression about him, in fact an appearance of a man who has lost decision of
24* character and judgment; pointing, I think, clearly to some chronic lesion of the brain, the result of his injury, and the effects of which are progressing.

To the 3rd interrogatory he saith: I think that the time which has already elapsed since the injury has been sufficient to relieve it, and therefore I consider his entire recovery as improbable, to say the least of it. My opinion is that the physical injury to his brain and spinal system has resulted in the production of his present impaired power of locomotion and deranged cerebral functions.

To the 4th interrogatory he saith: Before the injury he was a man possessing more than ordinary share of perseverence, industry, ac-
25* tivity, and physical vigor. Now he is a man whose mental activity appears to have become as unsteady and vascil'ating as his gait; he is physically a cripple. As to the future progress of his trouble it is difficult to predict, but we have reason to believe that any favorable change in his general condition, physical or mental, is not to be expected.

To the 5th interrogatory he saith: I believe the change produced by the great shock and consequent injury to the brain by the accident has caused all these manifest derangements of locomotion and intelligence which have since supervened.

To the 6th interrogatory he saith: I am a graduate of the University of Pennsylvania, in the year 1844, and began the practice of
26* medicine at the end of 1845, and have been in continual practice ever since.

To the 1st cross-interrogatory he saith: Probably weekly; I cannot say pos'tively. I have examined him three or four times. I cannot give the date of these examinations, as I made no note of them.

such a condition as libellant is now in? If you do not know every cause that can possibly produce such a state of affairs, how can you state that libellant's condition is alone attributable to the injuries caused by the collision with steamship Juniata?

18* 6th X-interrogatory. Has not trade and commerce at this port greatly fallen off and diminished during the last five years? Has not the demand for tugs and such class of vessels proportionally fallen off and diminished? May not this state of affairs have contributed more or less to have brought about the present condition of the libellant? If yea, to what extent would it have thus contributed? If libellant had not been injured by the said collision, can you state that he would not have had any of his present unfavorable symptoms?

7th X-interrogatory. You know the nature and object of this suit; you will, therefore, state any fact or circumstance that will be favorable to the owners of the steamship Juniata as fully and as much in detail as though you were especially interrogated in regard thereto.

19* (Signed) RANDOLPH, SINGLETON & BROWNE,
Proctors for Claimants.

CLERK'S OFFICE.

True copies of the originals on file.
New Orleans, June 16th, 1875.
[SEAL.] F. B. VINOT,
D'y Clerk.

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for the district of Louisiana.

To William Grant, a commissioner of the circuit court of the United States for the district of Louisiana:

Know ye, that reposing special trust and confidence in your in-
20* tegrity and ability, we hereby authorize and require you that you call and cause to come before you Daniel C. Holliday, M. D., and him duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein George Pursglove is libellant and the steamship Juniata defendant, in the case entitled George Pursglove vs. Steamship Juniata, and the United States vs. Steamship Juniata.

And the same examination, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to the Supreme Court of the United States without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Morrison R. Waite, Chief-Justice of the
21* United States, at the city of New Orleans this 16th day of June, anno Domini 1875, and the 99th year of the Independence of the United States of America.

[SEAL.] F. B. VINOT,
D'y Clerk.

This commission is herewith returned duly executed, as will appear by my certificate annexed, July 1, 1875.

WM. GRANT, *Comr.*

(Endorsed:) United States circuit court. No. 7206. George Pursglove vs. Steamship Juniata. Commission. United States vs. Steamship Juniata.

22* United States circuit court for the 5th circuit & district of Louisiana. In admiralty.

GEORGE PURSGLOVE } *vs.* } No. 7206.
STEAMSHIP JUNIATA. }

U. S. } *vs.* }
SAME. }

UNITED STATES OF AMERICA,
District of Louisiana:

Be it remembered that on the 26th day of June, A. D. 1875, at New Orleans, in said district of Louisiana, before me, William Grant, a commissioner of the United States circuit court of the fifth circuit & district of Louisiana, personally appeared Daniel C. Holliday, whom I caused to be summoned before me, to be examined as a witness in the above-entitled cause, by virtue of the annexed commission to me directed
23* out of the circuit court of the United States for the fifth circuit & district of Louisiana, on the interrogatorries and cross-interrogatorries annexed to said commission.

And the said Daniel C. Holliday, being by me first carefully examined, cautioned, & sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say, in answer to said interrogatories and cross-interrogatories as follows, vize:

To the 1st interrogatory he saith: Daniel C. Holliday, M. D. I have.

To the 2nd interrogatorry he saith: The condition of Pursglove's health at the present time is apparently good. It is somewhat altered but not improved since I last testified. His power of locomotion is not much improved, if any. There is a generally purposeless expression about him, in fact an appearance of a man who has lost decision of
24* character and judgment; pointing, I think, clearly to some chronic lesion of the brain, the result of his injury, and the effects of which are progressing.

To the 3rd interrogatorry he saith: I think that the time which has already elapsed since the injury has been sufficient to relieve it, and therefore I consider his entire recovery as improbable, to say the least of it. My opinion is that the physical injury to his brain and spinal system has resulted in the production of his present impaired power of locomotion and deranged cerebral functions.

To the 4th interrogatorry he saith: Before the injury he was a man possessing more than ordinary share of perseverence, industry, ac-
25* tivity, and physical vigor. Now he is a man whose mental activity appears to have become as unsteady and vascil'ating as his gait; he is physically a cripple. As to the future progress of his trouble it is difficult to predict, but we have reason to believe that any favorable change in his general condition, physical or mental, is not to be expected.

To the 5th interrogatory he saith: I believe the change produced by the great shock and consequent injury to the brain by the accident has caused all these manifest derangements of locomotion and intelligence which have since supervened.

To the 6th interrogatory he saith: I am a graduate of the University of Pennsylvania, in the year 1844, and began the practice of
26* medicine at the end of 1845, and have been in continual practice ever since.

To the 1st cross-interrogatorry he saith: Probably weekly; I cannot say pos'tively. I have examined him three or four times. I cannot give the date of these examinations, as I made no note of them.

To the 2nd cross-interrogatorry he saith: I have had a large practice during the last ten years. There have been an abundance of the diseases mentioned during that time, and have consequently invited a great deal of attention in the profession, but I do not know whether their relative frequency to other diseases has materially increased. I have seen these diseases sometimes manifest themselves in persons who up to that time were in good health. I am not prepared to admit that these
27* diseases have really greatly increased in frequency, but the improved investigations of them have rendered physicians in general more familiar with their phenomena, and therefore they are more usually recognized than formerly. I admit the precarious mode of living, the uncertainty of employment, and the lowness of wages, in fact, all the concommitants of hard times, do particularly affect the nervous system, but not to produce absolutely the condition of the case in question.

To the 3rd cross-interrogatorry he saith: I have not used the terms referred to. I did use the word lesion, which means an evidence of purturbed natural functions.

To the 4th cross-interrogatorry he saith: The evidence of the lesion spoken of is patent by comparing the present condition of libellant to what it was previous to the accident.

28* To the 5th cross-interrogatorry he saith: I do not affirm that these injuries were pos'tively the source of all libellant's troubles since the accident, but I do state that I firmly believe they were, as he never recovered fully after the accident, & to all appearances was in perfect health previously. I have seen patients seriously affected by some nervous lesions, without any apparent adequate cause. I cannot state that I know every cause which is capable of producing the condition in which libellant is in at the present time. I do not state the libellant's condition might not have been produced by some unknown cause, but when we have as an antecedent so violent an injury as the one sustained at the time of the accident, which we consider fully adequate to produce the lesion subsequently developed, I consider it much more reasonable to attribute this condition to the accident than to seek for some improbable other cause, to say the least of it.

29* To the 6th cross-interrogatorry he saith: Yes; trade and commerce, I suppose, have fallen off, as I believe from general report, but I do not think this has been the cause of libellant's condition, which was too suddenly manifested. I am wholly unable to decide whether libellant would have had the present unfavorable symptoms if the accident had not happened, but I believe not.

To the 7th cross-interrogatorry he saith: I have stated all I know in the case; and should my answers be unfavorable to the steamship Juniata, they are given only as the result of my professional judgment in the premises.

DANIEL C. HOLLIDAY, *M. D.*

30* The above and foregoing evidence was taken down by me at the time & place stated in the annexed caption-sheet, and contains the answers as given by the witness to the several interrogatories and cross-interrogatories annexed, and having been read over to the witness, *and* were by him signed in my presence, he having, previous to his examination, been duly sworn to tell the truth, the whole truth, and nothing but the truth.

Witness my hand and official seal, at New Orleans, in the State of Louisiana, June 26th, 1875.

[SEAL.] WILLIAM GRANT,
Commissioner of the United States Circuit Court for the District of La.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

THE UNITED STATES, APPELLANTS,
vs.
PHILA. & SO. MAIL ST'MSH'P CO. } No. 129.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Brief for the Appellants.

In the Supreme Court of the United States.

OCTOBER TERM, 1876.

THE UNITED STATES, APPELLANTS,
vs.
PHILA. & SO. MAIL ST'MSH'P CO. } No. 129.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

BRIEF FOR THE APPELLANTS.

STATEMENT.

Upon the 10th day of February, 1872, at 5 o'clock in the afternoon, the iron steam-tug Neafie took from alongside the iron steamship Juniata, 1,215 tons register, then lying in the Mississippi River, at Jackson Square, in the city of New Orleans, a flat-boat, loaded with cement belonging to the United States, which had been brought by the Juniata from Philadelphia for use at Forts Jackson and Saint Philip, on the river below New Orleans, and proceeded with it down the river toward the fortifications for which it was intended. The Juniata started from the same point at about 8 o'clock that same afternoon on her return trip to Philadelphia. Nearly midway, between the hours of 10 and 11 that

evening, both vessels had arrived at a point in their down-river course about 35 miles from their starting-place and between one and two miles below Poverty Point. Here they collided, and the flat-boat had the forward end stove and crushed in, and, with its lading, became a total loss. The main controversy in this case is as to which side of the river this occurred, and the direction that each vessel was then following. Descending vessels usually keep to the right of the middle of the stream and toward the westerly bank, in order to keep in the current and out of the back-water eddies and out of the course of inward-bound vessels, which keep toward the other shore—each party keeping to the right. (Record 13, folio 37.) Two sea-going passenger steam-packets left New Orleans for the North that evening, the General Sherman and the Juniata, starting in the order named. The General Sherman overtook and passed the Neafie at McCaul's flats, 24 miles from the city, (Record, p. 10 folio, 29; p. 39, folio 116; and p. 55, folio 159.) There were coast-packets bound down that had then previously passed this tug. (*Id.*) The coast-packet Bradish Johnson was on her trip down from New Orleans that night. Soon after the Neafie rounded Poverty Point, the Bradish Johnson, with pine torches lit, signaled for and made a landing at Saint Sophie plantation, having just previously made one above upon the other side of the river. The Saint Sophie landing is on the left or easterly bank, two miles or so below the place of collision. (Record 13, folio 37.) The night was clear and starlight, but there was a slight haze low down upon the river, which an easterly breeze blew over toward the right or westerly side of the river, leaving the left side clear. Such is the concurrent tes-

timony of all the parties, (Record, pp. 55, 60, folio 159, last ans.; 61, folio 178, last two answers; 65 and 66; 71, folios 208–9; 73, folio 215; 76, folio 225.) Hearing a whistle sounded up river from him, Mr. Pursglove, owner of the tug, left the pilot-house and went on top of the pilot-house to look over the haze and see the whole river, (Record 55, folio 160.) He saw the Juniata coming down stream on the right side and in her proper course, as she rounded Poverty Point. Then she crossed to the left side of the river, holding her way down stream until nearly abreast of the tug, when she sheered toward the left bank, and right toward the tug. Mr. Pursglove then stooped down to speak to his pilot, and before he could recover himself the steamship struck the tug a glancing blow, (Record, 10, folio 29; 20, folio 58; 26, folio 75; 38, folio 111; 43, top,) the steamship having ported her helm to avoid the tug, (Record, 30, folio 86; 86, folio 254,) doing her considerable damage, throwing Mr. Pursglove violently from the top of the house to the deck, and then cutting off and crushing the forward end of the flat, which projected about 25 feet beyond the bow of the tug, (Record, 22, folio 63, last answer,) staving it, and tearing out the cross-timbers at the bottom, so that it almost immediately sunk. The port bow of the steamer struck the starboard sides of the tug and of the flat. The tow was secured to the tug by lines to the bow and stern, and by a tow-line. Fearing that the tug would sink, and knowing that the scow must, two of these lines, the stern and tow lines, were cast off immediately after the collision. The cavel to which the bow-line was fast was pulled up and the line slackened. In the haste this was not cast off, and swung the tow round at right angles with the tug, as the stem

of the latter was driven upon the shore. Finding the tug was making no water, and that the scow was just under her stern, she was backed off, and then pushed the flat up to and partly upon the bank. The nature of the lading was such that it was ruined by being submerged. (Record, 18, folio 51.) The value of the boat was $140, at which sum she had just been bought second-hand for the Government for this use, and the damage to all the Government property was $2,527.50. (Record, 127, folio 384.)

Upon the facts so far stated, (except as to the sheering of the Juniata to the left side,) it is believed that no issue is made; as to the others, as given below, there is dispute; we shall, therefore, in stating them, follow the story told by those on board the Neafie and on board another tug, the Admiral, running down river some distance behind her, as most consistent with circumstances and conceded facts, and as related by those having the best means of accurate information. The Neafie had the requisite signals, properly set, and a full complement of men, suitable watch, and was in no respect in default. (Record, 11, folios 31, 32; 23, folio 66; 43, folio 125; 55–6, folio 161.) Knowing that the Juniata was on the river, and to avoid her, (Record, 57, folio 167,) the Neafie went down near the left bank of the river, inside even of the track of ascending vessels, (Record, 11, folio 31; 66, folio 192,) and where there was no fog, and was there when struck.

No whistles were blown on board the tug, nor were any blown on board the Juniata heard upon the tug.

ERROR ASSIGNED.

Upon the facts, the district court ordered, adjudged, and decreed, considering that both vessels were in fault,

that the damages sustained by the libellants, by reason of the collision, be divided, and that it be referred to a commissioner to report the damage. (Record, 126, folio 382.) In the circuit court it was ordered that this decree be affirmed, and that the United States recover from the steamer Juniata $1,263.75, (being one-half the damage by them sustained,) and claimants pay but one-half the costs. (Record, 139, folio 418.)

This decree is assigned for error, as is the finding that both vessels were in fault.

BRIEF.

I.

The Juniata was the heavier, larger, and swifter boat. She was unincumbered. She had virtually all the advantages that steam-power has over sails, and more than a ship running free has over one close hauled. (The Alleghany, 9 Wall., 522; The Syracuse, *id.*, 675.) Both vessels were traveling in the same direction; therefore, no signals were required to be given by the Neafie, and the other attempted to pass at her peril. (The Great Republic, 23 Wallace, 20; 23 Howard, 454; 2 Cliff., 537; The Narraganset, 10 Blatch., 475; McGrew *v.* Melnotte, 1 Bond, 453.)

It was the duty of the Juniata to be assured she could and would safely pass the tug. "Every vessel overtaking any other vessel shall keep out of the way of the last-mentioned vessel." (Rules of April 29, 1864, 13 Stats., 61, c. 69, art. 17; R. S., 823, rule 22.) The vessel trying to pass is liable for an accident resulting from their own erroneous supposition. (Commercial Stm. Co. *v.* Dutton, 2 Clifford, 537; Whitridge *v.* Dill, 23

Howard, 454, citing 1 Abb. Adm., 110; The Hermann, 4 Blatch., 441; The Thornton, 2 Benedict, 431; The Oceanus, 5 Ben., 545; The Bella Donna, Newberry, 510.)

II.

The Neafie, going the same way, was not required to give any signal. The Juniata was misled by the whistle of the Bradish Johnson, a descending coast-packet, into the belief that the Neafie was an ascending boat. (Record, 80, folio 237; 86, folio 254; 91, folio 270.)

Then the Juniata conducted herself toward the Neafie as if the latter had been an ascending boat; whereas she should have been navigated so as to safely pass a descending boat.

The Neafie was in no wise responsible for this misapprehension; but if by any negligence as to the look-out, speed, or position in the river, or otherwise, the Juniata, in consequence of their own mistake, occasioned the accident, she is solely bound to respond for the whole damage. (Genesee Chief *v.* Fitzhugh, 12 Howard, 462; cases cited *supra* and *passim*.

III.

The Juniata had no sufficient look-out, properly placed. The answers state (Record, 7, folio 18, bottom, and 108, folio 328,) that it was "Phillips, the *pilot* of said steamer, who was on deck, *in front of the pilot-house*, being on watch, *and on the look-out*," who discovered the Neafie.

The pilot, from the nature of his duties as to the guidance of his own vessel, was not the proper *person* for a look-out. (Chamberlain *v.* Ward, 21 Howard, 570; New-

ton *v.* Stebbins, 10 Howard, 607; New York *v.* Rea, 18 Howard, 225; The Ottawa, 3 Wallace, 258; The Parkersburg, 5 Blatchf., 247.

Nor is the deck in front of the pilot-house the right *place* for the lookout. (Chamberlain *v.* Ward, 21 Howard, 570; Haney *v.* Baltimore, 23 Howard, 293; St. John *v.* Paine, 10 Howard, 585; Genesee Chief *v.* Fitzhugh, 12 Howard, 462, 463; The Ottawa, 3 Wallace, 268; 5 Blatch., 247.)

The answers mention no other lookout.

It is true that the quartermaster, who was steering, swears (Record, 86, folio 255) that the watch consisted of Colton and Smith; and that the former was on the port side close to the fore rigging, (Record, 89, folio 265;) but Colton swears that he (C.) was "standing just forward of the pilot-house," (Record, 90, folio 268,) and that Smith was on the lookout forward. Of course, Colton says Smith was at his post, and that everybody was doing his exact duty, in his proper place. Smith, however, is not called as a witness. *Stat nominis umbrâ.* This John Smith is as much of a myth as Peter Schlemmil, the man without a shadow. He and his knowledge of this case have sunk into the oblivion of the innumerable Smiths, from which the libellants could not, and the Juniata would not, rescue them.

IV.

The Juniata was running at an unsafe *rate of speed.* (Rule 21; Newton *v.* Stebbins, 10 Howard, 606, 467; Genesee Chief *v.* Fitzhugh, 12 Howard, 462, 463; the Corsica, 9 Wall., 630; the Portsmouth, *id.*, 686; the Pennsylvania, 19 Wallace, 134.)

She left the levee about 8 o'clock. (Record, 67, folio

196, bottom; 75, folio 222.) In two hours and a half (Record, 84, folio 250) she had reached the point of collision, about 36 miles distant, (Record, 76, folio 224,) a mile or two below Poverty Point, and over a third of the way to the mouth of the river. She kept up this speed, because in "four or five hours" more she was at the river's mouth. (Record, 85, top.)

The Sherman left, probably on time, at least an hour earlier, passing the Neafie at McCaul's Flats, 24 miles down river. (Record, 55, folio 159.) It is claimed that the Juniata "lay by" fifteen or twenty minutes after the collision. (Record, 79, folio 233; 123, folio 376.) Yet she passed the other sea-going passenger-steamer, the Sherman, before they were out of the river, at Wilder's Flat, ten miles below the head of the passes. (Record, 82, folio 241, 224.) When she passed the Admiral, the captain of that tug testifies that the Juniata was "going like a race-horse." (Record, 67, folio 195. See also p. 122, folio 371.)

She was keeping this speed, while claiming to run on the right side of the river, where the low-lying haze hung over the water.

V.

The Juniata was clearly *out of her proper course*, and therefore liable. (Waring *v.* Clarke, 5 Howard, 465.) This is the main issue of fact in the case. The court below so considered, and proposed to leave it to a jury, (Record, 125, folio 380,) but neither party desired this.

It is admitted, on all hands, that her proper place was in proximity to the right bank, or upon that side of the middle thread of the stream. She seeks to avoid responsibility by testimony placing her in that position.

On the contrary the Neafie claims to have been within 60 yards of the left bank when she was struck. (Record, 11, folio 30.)

The Juniata should have kept to the right of the mid-stream. (The Nautilus, 1 Ware, 529, 532; The Brothers, 2 Ben., 104.)

Ordinarily, in collision cases, each party makes out a good case by his own officers, crew, and other witnesses. (Walsh *v.* Rogers, 13 Howard, 283; City of Paris, 9 Wallace, 636; 12 Howard, 460.)

Here we can show from their own witnesses, by a disinterested observer who was on board the tug Admiral, and by those circumstances which are undisputed, that the Juniata was not where they now wish to have it appear that she was.

Colton, the first officer, swears (Record, 93, folio 278) that she was in the center of the river, nigher the right bank, *if any;* at the bottom of page 97, (folio 291,) he says descending vessels usually *try* to keep the center "as nigh as possible," and that they were on their "proper course down."

The Juniata's quartermaster said, in answer to the last inquiry put upon the direct examination, (Record, 87, folio 258,) proposed in this very suggestively leading form, "Was she running in the usual track of descending vessels?" "Yes, sir; in the usual way I see them coming *up* and down."

Before referring to the passenger Reinhardt's statement, it will be desirable to call attention to what transpired before he came up to observe the steamer's position, and to some circumstances which the libellees' witnesses state, which would affect her course.

Reinhardt, himself a pilot, says the natural tendency

of the current was to take a vessel, rounding Poverty Point, under its bank into the bend. (Record, 118, top, folio 358.) The steersman, Thompson, says the Juniata "carries a starboard helm;" that the helm was "about amidships;" (Record, 88, folio 261) and, later in his cross-examination, (Record, 90, folio 267,) that "she is harder on one side than the other and you have to allow for it;" that she is harder "on the starboard than what she is on the port; *she will go faster around to port than she will to starboard;* she carries it harder on the starboard than she does on the port, and you have got to allow for it;" and concludes his cross-examination by saying that when his attention was first attracted to the Neafie he was holding the Juniata's helm "about amidships."

The natural tendency of the current was to sweep the passing craft under the bank at Poverty Point. The build of the vessel, either by her being slightly "lop-sided," a greater fullness of the port bow or port side, or some other peculiarity of construction, caused her to tend constantly to the port side. She was obliged to swing around the point for that reach, and all these things combined to carry her over into the left side of river.

The only course to be pursued, whichever side of the stream they were on, when the collision was imminent and inevitable, was for the Juniata to put her helm aport. All agree that this was done. (Record, 74, folio 217.) "*Hard* aport," the helmsman says, (Record, 86, folio 254,) the pilot lending a hand to throw the wheel down; and thereby the vessel was thrown round from the left toward the right shore. (*Id.*) The first officer says the helm was "hard aport" at the instant of collision

(Record, 91, folio 271.) Yet when Reinhardt, aroused by the "thud" of the collision, came on deck, the Juniata was lying in the middle of the river and heading directly down the reach! (Record, 117, folio 354–5.) This being so, she must have been upon the left side of the river before her helm was ported.

A judge, (Blatchford,) whose locality has given him greater experience probably than any other in the original hearing of admiralty causes, observes that nothing is more unreliable than the testimony of those on board one moving vessel of actions on board another moving vessel. (McNally *v.* Meyer, 5 Ben., 239) Another, familiar with the litigation arising in inland navigation, says substantially the same thing, that those on board of the tug would be most likely to know her true position when struck by the steamer. (McGrew *v.* Stmr. Melnotte, 1 Bond, 456–7. The case last cited is an exact parallel with the one at bar. Judge Leavitt says," the question for decision is upon the preponderance of the evidence, and, really, I can see no sufficient ground for the rejection of the testimony of the witnesses for the libellants as untrue or incredible. These witnesses were in the most favorable position to know the exact course and position of the Hornet before and when the collision occurred. They are before the court without any impeachment of their moral characters, and, so far as the court can know, have testified with fairness and candor. It would require the most satisfactory opposing evidence to justify the court in repudiating their testimony. Now, it is true they are contradicted by the pilot of the Melnotte and others on that boat. The pilot swears positively that his boat was heading straight down the river when the collision occurred, and

those on board, the injury to her not being instantly ascertainable, while that done the barge was apparent at a glance. The idea that attempt was made, under such circumstances, to tow such a craft, so laden, across a river three-quarters of a mile wide, for the sole purpose of letting it rot upon the left bank instead of sink near the right, is preposterous. The Juniata's pilot swears he saw this done, and that it was sufficiently clear for him to see the Neafie's entire trip across; that he could see the trees, and see Wederstraindt's plantation four miles further down; yet he run right square into the Neafie without seeing her at all. He simply destroys all credit to aught he says, and leaves the libellants' history of the occurrence the only one that can be relied upon as a safe basis of judicial determination.

EDWIN B. SMITH,
Assistant Attorney-General.

SUPREME COURT

Of the United States.

Philadelphia & Southern Mail Steamship Co., Claimants of the Steamship Juniata, and E. Schneider, Appellants, vs. George Pursglove & the United States, Appellees.	No. 130.
George Pursglove, Appellant, vs. S. S. Juniata, Philadelphia & Southern Mail Steamship Co., Claimants.	No. 628.
United States, Appellants, vs. The Same Appellees.	No. 129.

Appeals from the Circuit Court of United States for the District of Louisiana.

BRIEF OF ARGUMENT ON BEHALF OF THE PHILADELPHIA & SOUTHERN MAIL STEAMSHIP CO., CLAIMANTS, APPELLANTS, AND APPELLEES.

MORTON P. HENRY,
Attorney for P. & S.

SUPREME COURT OF THE UNITED STATES.

PHILADELPHIA AND SOUTHERN MAIL STEAMSHIP COMPANY, CLAIMANTS OF THE STEAMSHIP JUNIATA AND E. SCHNEIDER, *Appellants*, *vs.* GEORGE PURSGLOVE, and THE UNITED STATES, *Appellees.*	Appeals from the Circuit Court of the United States for Louisiana.
GEORGE PURSGLOVE, *Appellant*, *vs.* STEAMSHIP JUNIATA, PHILADELPHIA AND SOUTHERN MAIL STEAMSHIP COMPANY, *Claimants.*	Do. Do.
UNITED STATES, *Appellant*, *vs.* THE SAME.	Do. Do.

ADDITIONAL BRIEF ON BEHALF OF THE CLAIMANTS.

The preparation of the Brief as to the evidence on the part of the claimants, has been made by the learned counsel who argued the causes in the Courts below, which is annexed.

In asking this Court to reverse the decision of two Courts on questions principally of fact, counsel feel the weight of expressions used by this Court in previous cases, that it will not do to show that on one theory supported by some witnesses a different decree might have been rendered. It must be affirmatively shown that the error is palpable, and that the Court should not have arrived at the conclusion that both vessels are in fault, and that the only theory from admitted facts is that the Neafie was alone in fault.

These admitted facts are that the courses of the two vessels were across each others bows. That the tug Neafie and her scow struck the Juniata a blow on the larboard side abaft the fore rigging, and that the tug and her scow swung alongside the steamer, after which they drifted past. That the steamship did not strike the tug and her scow stem on, otherwise the tug and barge would have sunk.

It is admitted by libellant that he had notice of the approach of the steamship a sufficient length of time before the collision, and that no manœuvres were taken to avoid one, if the course of the tug tended to bring one about; and both sides allege that there was no such fog as rendered navigation dangerous.

It must also be admitted that the proper course of a descending steamer of large size, at the point of collision, was to keep to about the centre of the channel, to obtain the benefit of the current, and that the shore is bold on the right bank and the water deep, while on the left the shore is flat.

All these facts are to be found in the testimony on behalf of libellants, except the particular place where the Juniata was struck, which is derived from the respondents' testimony but is not contradicted by libellant.

To account for the collision under these circumstances the libellant avers in his pleadings and attempts to sustain by his evidence a strange and somewhat improbable story. It is the only one consistent with absence of blame on his part. That the tug Neafie with her tow was hugging the left bank of the river, keeping close in shore, at a distance of about two hun-

dred feet, as Pursglove, the owner, says, or seventy yards, as Hopper, the master at the wheel, says. In this condition the Juniata altered her course, "and steered with great velocity almost directly across the river pointed straight for the tug boat Neafie," and collided with her; "making a bee-line towards the west shore," is the emphatic description of the alleged course of the Juniata, by Vally, page 72. This, Pursglove, who was on top the pilot house, supports in evidence.

Now the Court below certainly held this statement to be untrue, or the damages would not have been divided, and it could not be true.

1. Because such a blow would have sunk both steamtug and tow.

2. Because no large steamship of the draft of water of the Juniata could be handled in such a way as to prevent her from going ashore at that distance from the left bank, where the water was shallow.

3. Because it is disproved by the evidence of Vally, the master of a tug following a mile and a half astern, who saw the Neafie as he passed her after the collision, making her way to the left bank, with her engine working, trying to land (Printed Record, page 66); the distance of two or three hundred feet would have been reached by the Neafie before he passed.

What, then, was the fault of the Juniata which justified the decree?

If the libellant's story is not true, the only other rational account is that of the master and pilot of the Juniata.

That a tug whose lights are partially concealed, being fastened to the smoke-stack, was discovered on the port bow of the Juniata; that the helm of that vessel was first ported, and that afterward, and as soon as the tug was discovered by her

head-lights to be heading across the river, the engine was stopped and reversed, but the tug continued its course, notwithstanding the whistle from the Juniata, and struck the Juniata on the port side, abaft the fore rigging.

This course of the steamship was right; to have starboarded the helm was to insure a collision; to port was to avoid it. After these acts were done, it lay only in the power of the tug to avoid risk, which was attributable to the utter neglect of Pursglove to give timely warning to the pilot. He saw the Juniata, had heard her whistle, he gave no warning of her approach which the *pilot* understood, and then invented the theory which the Court below has pronounced untrue.

It is perfectly clear that a passing vessel has no right to anticipate unnecessary changes of the course in a vessel ahead, and a steamer may be managed upon the assumption that she will do so.

This is the rule in The Free State (1 Otto 200) in regard to a steamer meeting a sailing vessel. It applies with equal force to another steamer. The same principle was applied in the case of *The Leonidas* (Stuart, vice Adty. Reports, &c., Canada, pages 216, 234), where a sailing vessel going in the direction ahead of another went into stays, the vessel astern was held not to be in fault.

To the same point are the cases of the Newburgh *vs.* The Oscar, Rules of the Road, 231. The Una *vs.* Thomas Lea, *Ib.*, 240. Both of which were cases of changes of course by sailing vessels when steamers were approaching.

If, therefore, the orginal course of The Juniata, in porting her helm, was right, either as to an ascending or descending vessel, no blame can attach to her if the tug Neafie altered her course or continued in an altered course across the channel after sighting the Juniata, more particularly as the lights of the tug were wholly or partially concealed. She ought to have slowed down and passed under the Juniata's stern. Vally's Testimony, p. 70.

No witnesses assert that the character of the night was such as to render navigation dangerous. There was a low fog on the right of the river. The tug was seen from the Juniata—and the Juniata, a larger vessel, ought to have been seen from from the tug. Compared with the speed of river passenger boats, the speed of the Juniata was slow.

It is, therefore, respectfully suggested that the Juniata cannot be held in fault, except on the theory of the libellants, which has been rejected by the two Courts, and the *rusticum judicium* which divides the loss is erroneous as to that vessel.

The Measure of Damages.

The actual damages awarded to the vessel for injuries, was $602.50. Personal damages to the libellant Pursglove were awarded to the extent of $9,397.50. The compensation for his injuries was, therefore, assessed at $18,795.00.

The same objections apply to appeals from assessment of damages in the lower Courts.

But the amount awarded in this case shocks by its disproportion to the amount of damages awarded by juries.

These may be different in different states. But there are few cases where a man in the condition of life of the libellant Pursglove has recovered an amount equal to this.

The damages awarded are not compensatory, but exemplary, which cannot be justified where the party injured contributed to produce them.

There is a standard for the measure of damages in actions for personal injuries, to be found in the statutes of the different States, giving the limit of damages in actions for loss of life. These are referred to in a note to Sedgwick on Damages, p. 696. Recovery is limited to fixed sums, generally $5,000 or $3,000.

Some standard, also, may be found in the pensions awarded by the Government to officers and soldiers, for wounds or disabilities received in the service; compared with the compensation

given by these statutes, the damages awarded to Pursglove are too excessive. They confer on a man a sum, which to a person in his condition of life, is a small fortune, as compensation for injuries which he contributed to bring upon himself.

Counsel do not ask this Court to examine the evidence upon which an assessment is arrived at. In this case the facts are not disputed, and the only question is one of judgment upon facts. It is questionable whether vessel owners can bear a measure of damages for losses sustained through their agents, of an extent which would render the ownership of such property too hazardous for prudent men.

That this Court, though ready to adopt, is not absolutely bound by the decree of a lower Court as to damages, even in salvage cases, appears by the decision in Post *vs.* Jones, 19 How. 150–160.

But a more important question arises as to the apportionment of the damages sustained by libellant for his *personal* injuries.

The rule of the common law, which will not permit the injured party to recover when his own negligence has contributed to the loss, is everywhere adhered to in the United States.

The rule which apportions the loss where both are in fault is confined to the admiralty Courts. Whether it has any application to personal injuries has never been decided here. It is believed to be a case of the first impression. The reason which substitutes a different rule as to ships in Admiralty is one more of convenience than of scientific application of principles of jurisprudence—see letter of the Registrar of the Admiralty to Lord Chancellor Selborne, in note to Machlachlan on Merchant Shipping, 2 ed., p. 287, and "it does not treat the amount at stake as a fund to be divided between the parties, but as a joint loss to be apportioned between them." Among the continental nations the loss has been averaged where neither vessel was in fault.

As regards property, or damages, which represent property lost or destroyed, the rule is capable of sensible application.

But where damages are in the nature of a "solatium," or a recompense for pain, or mental anguish, or anxiety, which are included in the damages for injuries to the person, it is incapable of application. It can have no place where the damages are not capable of liquidation. In average, "The lives which are "preserved, are not brought into account; by reason as it has "been said of the impossibility of assessing them at a pecuni- "ary value." The Law of General Average, by Lowndes, p. 259. The rule of divided damages has been modified by the late decisions of this Court in actions by a third party against two vessels, both of which are in fault, and restored the common law rule to the admiralty, so far as the entire liability of two tort feasors.

MORTON P. HENRY,
For the Philadelphia and Southern Mail Steamship Company, appellants and appellees.

BRIEF OF PLEADINGS AND EVIDENCE.

In the above entitled causes the libellant and the claimants in each case appealed from the decree of the Circuit Court to this Court. Both cases in District and Circuit Courts were tried together and on the same testimony, and were argued at one and the same time.

We propose to argue both appeals, in each case, in this Court, by one and the same brief, and thus abridge the labor and save the time of this Court.

STATEMENT OF THE CASE

as Contained in the Pleading.

In 1872 the steam tug boat Neafie was owned by the libellant, George Pursglove, who employed her in the port of New Orleans, and other places on the Mississippi River, in towing ships, barges, flat-boats, and other vessels.

On the 10th day of February, 1872, the said tugboat Neafie left the Port of New Orleans, on a voyage to Fort Jackson, situate on the bank of the Mississippi River, about seventy miles below the said city, with a flatboat of cement in tow, belonging to the Government of the United States, which the government intended for use in and about said fort. That between ten and eleven o'clock, P. M., of said day, said tugboat Neafie, with said flatboat laden with cement in tow, reached a point about one mile and a half below Poverty Point on said river, and about thirty miles below said city. That said tug Neafie "was tight, staunch, and strong, and in every respect "well manned, tackled, appareled, and appointed, and the flat-"boat she had in tow was in good order, and well conditioned, "and properly and carefully guarded and steered; that in this "condition, the said steamer Neafie, with her signal lights all "burning, with the usual and necessary complement of officers "and men on board, and the master and crew all at their posts "on duty, was keeping close to the left bank of the river, leav-"ing room, ample, and more than usual, unobstructed room for "the free, safe, and convenient passage of all descending "steamers."

That when the tug was proceeding a short distance below the point, and near the left bank, the steamship Juniata, an iron propeller of great weight, tonnage, and power, then on her voyage from New Orleans to the City of Philadelphia, proceeded down the river until she came to Poverty Point, under a full head of steam, "and instead of keeping on the course of

"vessels descending the Mississippi, as it was her duty to do,
"steered with great velocity, *almost directly* across the river,
"pointing straight for the tugboat Neafie, and with great force
"and violence ran into, and collided with her, and the flatboat
"she had in tow."

"That the night was fair for running on the river, and had
"the Juniata been properly steered, and skillfully navigated,
"and blown her steam whistle as she was bound to do, such
"collision would not have happened; but she was improperly
"and unskillfully, lawlessly and recklessly steered and navi-
"gated; and through her own fault and negligence, and disre-
"gard of law and the usual course of navigation, and the utter
"carelessness, and wanton and malicious mismanagement of the
"master and officers, and crew, she came steadily and rapidly
"upon, and ran into the Neafie and the flatboat."

"That the steamship Juniata struck the Neafie with great
"force and violence, forward of her pilot house, on the star-
"board side, causing her to careen, and throwing her with
"great force towards the shore, on her port side; knocked
"away and took the head completely out of the flatboat which
"the Neafie had in tow, and which, in consequence thereof,
"soon filled and sunk with her entire cargo, and that the col-
"lision hurled libellant, who was on the roof of the pilot house of
"the Neafie watching the movements of the steamship Juniata,
"fifteen to eighteen feet from the pilot house, to the deck be-
"low, broke three of his ribs, produced concussion of his brain
"and spinal cord, rendered him insensible, and has ever since
"confined him to his bed; has subjected him to great pain,
"anguish, and suffering of mind and body; to heavy expense
"for surgical and medical aid and treatment; to serious and
"ruinous losses in business, throwing him out of employment
"and trade, injuring his tugboat to the amount of one thousand
"and fifty dollars, and, according to the annexed Exhibit A,
"depriving him of the towage, to wit, one hundred and sixty
"dollars, of the flat boat which was destroyed, and other tow-

"age, to the amount of twenty dollars, and according to said "exhibit, and incapacitating him for a long time, and probably "permanently, from following his vocation."

The claimants denied that the Neafie was well officered, manned, and equipped, and was well and skillfully navigated, and allege that she had not a licensed pilot on board, and no proper signal lights, nor any lights which would indicate her character as a steam tug-boat in charge of a tow, or the direction in which she was moving, and that she had no proper look-out on watch, and that the flat-boat she had in tow was not tight, staunch, in good order, and well conditioned, and that it was not properly guarded and steered, and that there were no lights on the flat-boat as required by law, and that she was carelessly, negligently, and recklessly handled and steered.

That said steamship was well and properly prepared in every respect for her intended voyage, and was properly navigated.

That having passed Poverty Point (which was on the left bank) a short distance, and about the middle of the river, and intending to descend the river near the right bank, in the stretch below, as is usual and customary, George Phillips, the pilot on watch in front of the pilot-house, and on the lookout, discovered a vessel, which proved to be the Neafie, with a flat-boat in tow, well on the port bow of the Juniata, without any of the usual lights to indicate her character or course, about the middle of the river, and about one thousand or twelve hundred yards below; that the helm of the Juniata was immediately ported, in order to pass between said vessel and the right bank of the river. "That shortly after, when nearing the "usual signalling distance, the said vessel blew one blast of "her steam-whistle, indicating that she could go to the right, "and immediately thereafter one signal of one blast of her "steam-whistle was given by the Junita in answer thereto; "that it being the duty of an ascending boat to select or "choose the side on which she would pass, the officer on watch, "in said steamship, when said steamtug gave said signal, was

"satisfied that it was an ascending steamer (although no light
"except one white light was visible on her), and ported the
"helm of the steamship still more, in order to give said steam-
"tug an abundance of sea room to pass on the larboard side of
"said steamship; that almost immediately thereafter it was
"discovered that said steamtug was crossing the river, ap-
"proaching rapidly the course or track which the steamship
"Juniata was pursuing, which was at the time east-southeast,
"and the proper course; that thereupon the engines of the
"Juniata were reversed, and she commenced backing, in order
"to stop her as quickly as possible, and her helm was put hard
"aport, but that despite all the efforts of the officers and crew
"in charge of the Juniata to avoid a collision, and despite the
"crying out of the pilot of the steamship Juniata to those in
"charge of the steamtug Neafie, 'where are you coming to?'
"the steamtug continued her course with her helm aport
"(which brought her across the course of the steamship), and
"with her tow ran into and struck the steamship Juniata on
"her larboard side, about ten feet abaft the fore-rigging; that
"at the moment of collision, the steamship had steerage way
"only, and was near the right bank of the river; that it was
"with great difficulty that the steamship was saved from going
"aground after the collision occurred, by putting her helm
"hard a-starboard."

"That those in charge of the steamship did everything in
"their power and that was possible to be done, to avoid the
"said collision, which was caused solely by the unskilfulness,
"mismanagement, reckless conduct, and ignorance of those in
"charge of said steamtug. That those in charge of said steam-
"tug must have seen the larboard light of the steamship, and
"known that she was steering so as to pass on the starboard of
"the steamtug; that the one blast of her signal, given by the
"Juniata, must have indicated to those in charge of the steam-
"tug (if they knew their duty), that the Juniata was going to
"the starboard of the steamtug, descending to the right bank

"of the river; that, notwithstanding all this, instead of keep-
"ing on their course, as it was their duty to have done, they
"ported the helm of the steamtug, making her course across
"that of the steamship; that in consequence of this illegal,
"reckless, and unwarrantable conduct, on the part of those in
"charge of the steamtug, the Juniata, while passing the steam-
"tug (the latter continuing to carry aport helm, thereby
"throwing her, with her tow, across the course of the Juniata),
"struck with her tow the steamship about ten feet abaft the
"fore-rigging, and swung along the larboard side of the steam-
"ship, bringing the steamtug, which was on the starboard side
"of the tow, against the side of the steamship Juniata. That
"such was the course of steamtug at the moment of collision,
"that she would have run into the right bank of the river, in-
"evitably in a few moments, had she not collided with the
"steamship Juniata."

"Respondent avers that there were not two lights, one above
"the other, on the steamtug at the time of the collision, as are
"required by law; nor were there any lights whatever on the
"scow or flat-boat which she was towing."

The libellant, Pursglove, claimed $21,205 damages. The decree of the Court allowed $10,000. T. p. 127.

The decree divided the damage also in the case of the United States *vs.* Juniata, rendering judgment for $1,263.$\frac{75}{100}$. T. p. 127.

From these judgments the libellants and claimants, in each case, appealed.

The conflict of testimony in these cases is, we believe, without a parallel; certainly in our long practice we have never met with a case presenting so great a conflict in the testimony adduced.

The witnesses for the libellants place the Neafie on the bank of the river from fifty to two hundred yards distant from the bank.

The witnesses on one side or the other have either wilfully perjured themselves, or are greatly mistaken and deceived as to the position of the two vessels when the collision occurred.

We believe the witnesses in the Neafie were lost in the fog, and were actually mistaken as to the position of the vessels at the moment of the collision.

If we succeed in showing conclusively that the libellants witnesses were so badly mistaken as to the position of the vessel as to place the collision near the left bank, when it did in fact occur at or near the right bank, then your Honors will be forced to believe the statements of claimants' witnesses in preference to the statements of the libellants', whenever their statements conflict and cannot be reconciled.

Let us now turn to the testimony.

Henry E. Hopper, the pilot of the Neafie, says, in answer to the question:

"Q. How close were you on the left bank?

"A. The time she struck me I was not over sixty yards from "the left bank; I was inside of the track of vessels ascending "the river coming along that bank." T. p. 11.

John McVey, fireman on the Neafie:

"Q. Where was the tug when the collision occurred?

"A. The tug boat was close into the bank; I could see the "bank by standing on the tug boat's rail." T. p. 22.

James McFaddin, fireman on the Neafie:

"Q. How far from the left bank?

"A. I should think about a hundred yards." T. p. 27.

Samuel Williams, cook of the Neafie:

"Q. You say you were running on the left bank; were you "near the bank?

"A. Yes, sir; I could see the shore by glimpses; you could

"see nothing out in the river, and those that were aboard the "ship I do not suppose they could see anything in the river." T. p. 37.

John C. Miller, deck hand on the Neafie:

"Q. How near the left bank of the river was the Neafie "when the collision occurred?

"A. to the best of my judgment about fifty yards." T. p. 43.

George Pursglove, the libellant says:

"I looked at our course; we were then proceeding down the "left bank at about two hundred feet from the shore; we "were close to the bank." T. p. 55.

We will now refer to the testimony of the claimants' witnesses:

George M. Phillips, a licensed pilot by the United States Government, and has license as branch pilot from the state. He was employed as pilot to take the Juniata out to sea. T. p. 73.

"How near was the Juniata to the right bank when the col- "lision occurred?"

"A. As near as I can judge she was about three or four "hundred feet." T., p. 74.

Lodge Colton, first officer on the Juniata:

"Q. Before the collision occurred how near had you ap- "proached to the right shore?

"A. I should say we were better than half way over to the "right shore; nigher to the right bank considerably than we "were to the left; it looked so to me by looking at the two "banks. * *

"Q. How near did you get to the shore before you star- "boarded your helm to get out?

"A. Very close to the bushes; I heard the pilot say after "the Neafie got clear, after the collision, '*hard-a-starboard,*' "to get the ship right from the bank before we would strike

"the shore; at that time I could almost have thrown a biscuit "on the bank." T., p. 91.

The conflict between the statements of the witnesses belonging to the respective vessels is pointed and decided. This conflict of testimony cannot be reconciled. The two statements cannot both be true. One or the other is untrue. This testimony throws no light upon the actual positions of the two vessels at the moment of the collision. The error or falsehood contained in one or the other of these two statements cannot be ascertained and pointed out, except by a reference to proved and clearly established facts by the witnesses on both sides, facts concerning which there is no conflict. Are there any facts established by the testimony on both sides, and concerning which there is no conflict? There are two such facts, and we will now proceed to point them out.

First. All agree as to the extent of the fog and what portion of the river was covered by it.

H. C. Hopper, pilot of the Neafie, says:

"It was a good night for running. The bank was clear, "both sides of the river, *except in the bend*, where the fog "generally settles." T., p. 20.

George Pursglove, the libellant.

"Q. Was there much fog on the water that night?

"A. On the right bank the fog was about ten feet high from "the water.

"Q. How far out in the river did it extend?

"A. *It extended about one-third of the way from the right "bank.*

"Q. And the rest of the river was clear?

"A. Yes, sir; on the windward side." T., p. 61.

John McVey, fireman on the Neafie:

"Q. What sort of a night for running was this?

"A. It was good enough for us; we could see the bank "easy; on the other side of the river it seemed to be foggy "and thick; the right-hand side coming down was thick and "foggy." T., p. 26.

George M. Phillips, river and bar pilot on the Juniata, says:

"There was a little on the river, a low fog; the left bank of "the river was quite clear; could see the shore going down; "there was no fog on the left bank; the fog was from the *middle* " *of the river to the right bank;* still I could see the right "bank." T., p. 73.

* * * * * * °

"Q. There was some fog that night?

"A. A little fog from the middle of the river to the right "bank, where the collision occurred; *it was clear on the left* "*bank.*" T., p. 76.

Here are three witnesses, the libellant, his pilot at the wheel, and McVey, his fireman, all swear positively, clearly, and distinctly, to one fact, viz.: *that there was no fog on the left bank of the river;* that the fog extended from the middle of the river to the right bank. George M. Phillips, the pilot of the Juniata, confirms this statement of the three most important witnesses of the libellant, he himself being one of those witnesses. Here then is a very important fact in securing a correct decision of these two cases, which is clearly proved, and contradicted by no one.

Second. Did the collision happen in the fog, or in that portion of the river where there was no fog?

We will show from the testimony that the collision happened in a thick fog, though not a high fog.

H. C. Hopper, the Neafie's pilot:

"Q. About how far was the Juniata from you when you first "saw her?

"A. She was almost on top of the tug when I stepped to the "side door.

"Q. About how many feet?

"A. I would not say she was over from six to ten feet from "us, *because on a foggy, dark night* a steamer like that could "not be seen any distance." T. p. 14.

John McVey, fireman on the Neafie, says:

"Then I could see the bow and discern her hull coming out "of the fog; it was *thick fog* where she was." T. p. 22.

"Q. How near was the Juniata to you before you knew there "was a boat any where in the region?

"A. When I first made her out, about twenty feet off." T. "p. 26.

Samuel Williams, cook on the Neafie, says:

"Q. You say you were running on the left bank; were you "near the bank?

"A. Yes, sir: I could see the shore by glimpses; you could "see nothing out in the river; and those that were aboard the "ship, I do not suppose they could see any thing in the river. "*I could not see the side of the ship until she got as close as that* "*door there (about fifteen feet); when I first saw her she was no* "*more than twenty-five feet or thirty feet away*; you could just "see the mast-head light; I was sitting in the galley-door and "could hear the ripple of the water, and then she was right on "top of us." T. p. 37.

"Q. Did nobody on board of your vessel give any alarm "about the Juniata coming—did you hear no one say anything "about her approaching?

"A. Yes, sir; Jack, he was standing, and he says then to "Mr. West, 'here comes a steamship coming right into us.'

"Q. How far was she then?

"A. I do not suppose she was above twenty-five feet.

"Q. That was the first you heard of her approach?

"A. Yes, sir; and then I could hear the water, but could "not see nothing; I was looking through the fog and with my "head up; I could see the masthead light." T. p. 40.

John Miller, deck hand on the Neafie:

"Q. Was there much fog?

"A. There was a good deal of fog.

"Q. How near did the Juniata come to you, before you saw "her?

"A. About twenty yards before I saw her.

"Q. What did you first see of her?

"A. The signal lights—green and red, and a light at the mast-head." T. p. 45.

George M. Phillips, pilot on the Juniata:

"Q. There was some fog that night?

"A. A little fog from the middle of the river to the right bank, *where the collision occurred*; it was clear on the left hand.

"Q. Was the fog thickest in the bends of the river?

"A. Yes, it was at that time; it was biggest on the right bank; that was in the bend above Wilkinso n's plantation and "abreast of it too; it was a low fog; on the left bank it was "clear, and I could see the left bank very plain. * * *

"Q. Was the middle of the river entirely free from fog?

"A. There was a little bit from the middle of the river to "the right bank, where the collision occurred; a low fog." T. p. 76.

Have we not most conclusively shown, from the foregoing testimony, two important facts—important, because we are thereby enabled to learn the truth as to the point in the river where the collision occurred.

We have shown—

1st. That there was no fog, except from the middle of the river to the right bank.

2d. That the collision occurred in a dense but low fog, in which it was impossible for those on the deck of the Neafie to see the Juniata beyond a few feet.

The two points above stated are conclusively proved by all the witnesses.

But there is another uncontradicted point of no little importance in this case, inasmuch as it is strongly corroborative of the above. It is this—immediately after the collision, the wheel of the Juniata had to be put hard "*a-starboard*," to keep her from running into the right bank. When the helm was put hard "*a-starboard*," the vessel bore away abruptly to the left.

Now, if she had been near the left bank, stated by libellants' witnesses, say fifty or sixty yards distant from the left bank, would she not have been brought immediately, with great force, against the left bank, on putting her helm hard a-starboard? Such would, doubtless, have been the case.

George M. Phillips, branch pilot:

"Q. What did you do on the Juniata after the collision? "What did the Juniata do?

"A. Put the helm a-starboard, to keep her from running "into the right bank of the river." T. p. 79.

Lodge Colton, first officer of the Juniata:

"Q. How near did you get to the shore before you star- "boarded your helm to get out?

"A. Very close to the bushes; I heard the pilot say, after "the Neafie got clear, after the collision, 'hard a-starboard,' "to get the ship right out from the bank, before we would strike "the shore; at that time I could almost have thrown a biscuit "on the bank." T. p. 91.

That the helm of the Juniata was put "*a-starboard*" immediately after the collision, is proved beyond a doubt.

But let us refer to the testimony of another witness who was a passenger on the Juniata. His testimony is entitled to great weight, from the fact that he was a passenger, and especially, when we recollect that he was a seafaring man, viz.: Louis Reinhart, a pilot for nearly thirty years. This witness was asleep when the Juniata stopped her engine to keep out of the way of the tug; the stopping awoke him; and some time after the engine was stopped, the collision occurred. When he got on deck, both the Juniata and the tug were about the middle of the river. The tug was then about twenty or thirty feet near the Juniata. Reinhart heard the engine stop, and her headway was "stopped dead before he heard the thud"—the collision. T. 117—120.

Chris Valley, captain of the tug Admiral, and witness for libellants, places the Juniata on the right bank, in the bend, just a few moments before the collision, and nearly opposite the place where libellants witnesses say the collision occurred.

"Q. You say you could see the Juniata when she turned the "point?

"A. Yes, sir; could see her over the land, she being so much "higher than the Neafie; you could not see the Neafie so plain; "she being a lower boat.

"Q. When she turned the point, could you tell which bank "she was running along?

"A. She was running along, as well as I could judge, from "the point to the opposite shore—to the right hand bank of "the river. She did not seem to go around with the line of "the point, but went around the point, and went to the opposite "shore, to Wilkinson's trees.

"Q. Where did she go after that?

"A. There is where I lost sight of her, paying attention to "the Johnson making a landing. The last I saw of her, she

"had gone across to the opposite shore by the willows at Wil-
"kinson's plantation, and then I lost sight of her, and do not
"know where she struck a bee-line towards the left hand shore.
"I did not see her then." T. p. 72.

How can the mistake of the libellants' witnesses, as to the position of the boats, be explained? They were lost in the fog, and mistook a fog-bank for the left bank of the river. This mistake often occurs, both on the river and at sea. We have shown that the collision occurred near the right bank, and yet, the bell to land had been rung, and they were looking for a landing on the left bank when a half mile or more distant from the bank. T. p. 44.

We have clearly shown that witnesses on the Neafie were either mistaken as to the place where the collision occurred, or have sworn falsely; and in either case their testimony must be disregarded.

3. We think the weight of testimony proves that the bow of the flat was driven in.

John McVey:

"Q. How did she strike the flat-boat?

"A. I did not see how she struck the flat-boat; the star-
"board bow of the flat, the corner, was all torn off and jammed
"in." T. p. 23.

"Q. What part of the flat was broken?

"A. The forward part of the starboard bow of the flat-boat.

"Q. How far was it driven in?

"A. Kind of drove across; the starboard corner of the scow
"was jammed into the boat itself." T. p. 26.

West Cassell.

"Q. What damage was done the flat?

"A. I could not tell, as we left there again that night; she
"was a covered boat; I see she was all mashed in forward; I
"took a look at her after shoving her up." * * * *

"Q. Did you see the flat after it was struck?

"A. Yes, sir; I did.

"Q. Did you notice whether the end of her was mashed "inwards or knocked off?

"A. All I saw was the roof was mashed off; it was "tumbled in.

"Q. Driven back into it?

"A. Seemed as if the whole side was knocked in and the "deck fallen down; *the forward end was knocked in.*" T. p. 33.

Had the Juniata been going at the speed stated by libellants' witnesses, and struck the flat as alleged, she would have carried away the whole bow of the flat. But as the flat ran into the Juniata sometime after she had stopped her engine, it was natural that her bow should be driven in, "jammed in," and not carried away.

Fourth. It was contended in argument that the collision could not have happened on the right shore, because the flat was too heavily laden to admit of her being taken to the left bank in her injured condition.

This is a mistake. The scow, or flat-boat was "*of large dimensions.*" She had on board only 500 barrels of cement. The heaviest cement does not weigh over 325 pounds to the barrel. Then 500 barrels make just 81¼ tons. The flat did not draw over 2½ feet. T. p. 19.

Large sized flats, when heavily laden, draw from 4 to 6 feet. Then there was nothing to prevent her from passing from the right to the left after the collision. They took her to the left bank to save her if possible, for the bank was flat on that shore, but on the right shore the bank was steep and the water very deep. T. p. 79.

Fifth. We submit that the weight of testimony shows that there was no light on the flat or scow, or white light on the Neafie, as the law requires. The testimony is conflicting on

this point, but as we have demonstrated heretofore in several particulars, the claimant's witnesses are more reliable than the libellants. G. M. Phillips, the branch pilot, says, there was no light on the scow, and no white light on the tug. T., p. 78.

Thomas Thompson says he saw the smoke of the Neafie, heard her whistle, but could not tell which way she was running, because he could not see any lights on her. T., p. 86.

Lodge Colton says there was no white light. T., p. 94.

Sixth. At the time of the collision there was no watchman on the flat-boat, as required by law.

Here is what Williams, the cook of the Neafie, says on this point:

"Q. Was there a watchman for the flat?

"A. Yes, sir; there was a watchman for the flat. *He had "just come aboard* and got a cup of coffee, and went aboard "the flat and told me, 'I am going to pump her out. We will "be down pretty soon.' *And after a few moments, when he "got his coffee,* he was aft of the boiler, and said he, 'here is a "ship coming right into us.'" T., 36, 37.

The watchman could not have been on the flat, for had such been the fact, then the tug would have been between him and the Juniata, and he could not have seen the Juniata. But he was still on the Neafie, and had just started to go on the flat, and had got aft of the boiler, doubtless on the starboard side of the tug, when he discovered the Juniata, and then cried out, "*Here is a ship coming right into us.*"

Seventh. The only look-out on the tug Neafie was Capt. Pursglove, the libellant, and he was equal *to no look-out at all,* for he gave no notice to the pilot (Hopper) of the Neafie, that the Juniata was approaching. T., p. 60.

Hear Hopper, the pilot of the Neafie:

"Q. How long before the vessels came together did Mr. "Pursglove speak to you about the Juniata approaching or "being in the neighborhood?

"A. *He did not tell me anything before she struck about her "being in the neighborhood, only what he told me since.*" T., p. 19.

Pursglove, speaking of the Juniata, says:

"I noticed her then suddenly change around and hold her "bow straight for us, pointing right stem straight; you could "see all the lights; I looked at our course; we were then pro- "ceeding down the left bank and about two hundred feet from "shore; we were close to the bank; when I saw she did not "alter her course, I laid down on the pilot-house and spoke to "the pilot at the wheel; we were laying about one point from "the shore; I told him the steamer was coming, and he had "better hold a little to the left, as he had a little room; and "then I arose and saw the steamer was on top of me." T. 55.

Further on in his testimony, speaking of the Juniata, when she changed her course and aimed directly for his vessel, he says: "When she suddenly changed her course right towards "me at X; and I suppose I watched her, at least, three or "four minutes, expecting her to change her position; when I "found she did not, I spoke to the Captain." T. p. 60.

Thus it will be seen that the libellant saw the Juniata aiming directly for the tug during, at least, three or four minutes, and before he attempted to inform the pilot at the wheel of his own vessel, that the Juniata was running directly into his tugboat. However, we have just seen that the libellant gave the pilot, Hopper, no notice, whatever, of the approach of the Juniata. Hopper swears that Pursglove did not notify him of the Juniata's approach.

Is not this gross negligence on the part of Pursglove, which must prevent his recovery in this suit.

Pursglove saw the danger of the approaching collision at least three or four minutes before the collision, and yet he did not inform the pilot of the danger; neither did he take any precautions to prevent his being thrown from the top of the

pilot-house. Such gross negligence as this cannot find relief in a court of justice. Captain Pursglove was not a sufficient lookout on the Neafie. The Ottawa, 3 Wall., p. 373–5.

Eighth. The claim for damages is excessive. Shortly after the libellant was injured, the towing business fell off very much indeed, and on the thirtieth of May, 1872, about four months after the collision, his tug so far from making money had lost very heavily. When the accident occurred, his tug owed above five hundred dollars, and on the thirtieth May following, when he gave his testimony, his tug owed about $2,500. Many other tugs had engaged in the business, and, notwithstanding his tug was run by an active and efficient man, she, nevertheless lost heavily. T. pp. 62, 63.

The libellant has filed a statement of the business of the tug from December, 1870, to April, 1872, inclusive.

This statement shows how the business decreased.

For instance :—

January, 1871, the earnings were, - - -	$2,261 00
" 1872, " " - - -	1,091 00
Falling off, - - - - -	$1,170 00
21 days in February, 1871, the earnings were, -	$1,278 00
February, entire month, 1872, " " -	818 00
Less, - - - - - -	$460 00
March, 1871, the earnings were, - - -	$2,305 50
" 1872, " " - - -	1,049 00
Falling off, - - - - -	$1,256 50

See T., p. 124.

In order to show how little confidence can be placed in the estimony of Hopper, libellants' principal witness, let us refer

to what he says about the earnings of the tug. He says the last nine months, while Pursglove was on her, she made $6,000 clear; T., p. 17. He says her monthly expenses, exclusive of fuel are $600; T., p. 21. That her fuel averages $500 per month. Thus it appears her monthly expenses average $1,100, for nine months her expenses would amount to $9,900.

The gross earnings of the tug for the nine months preceding the collision amounted to the sum of $11,756; T., p. 124. The expenses during the same time were $9,900, which taken from the gross earnings for nine months leave $1,857, and not $6,000, as stated by Mr. Hopper.

What reliance can there be placed upon the testimony of such witnesses? Your Honors must answer that question.

SINGLETON & BROWNE,

for The Phila. & S. M. S. Co.

ADDITIONAL BRIEF OF AUTHORITIES.

It is important to show that the Rule of Admiralty which apportions the loss between *two vessels*, is one of mere expediency, adopted by the Admiralty Court in England, in The Woodrop Sims, 2 Dodson, 83—85; and thence introduced into the Admiralty Law of the United States. Schooner Catharine *vs.* Dickerson, 17 How. 170.

It is not derived from the Roman Law, which is the same as the Common Law. Nor is it true that it is the universal Maritime Law of Continental Europe. On the contrary, the rule which divides the loss in case both vessels are in fault, is not of universal application. It is *not* the law of France. *Pardessus Cours de Droit Commercial vol. 3*, p. 88, sec. 652.

"If it is shown that there is fault on both sides, each one bears his loss." The *Code de Commerce*, Art. 407, in relation to collisions, is silent as to collisions caused by fault of both parties, but divides the loss only where the collision has not happened fortuitously, but the fault is inscrutable, See also *Pardessus Cours de Droit, Commercial*, ante. This is said also to be the law of Holland. It is strange this possible cause of collision is omitted by Lord Stowell in the often quoted passage from his decision in The Woodrop Sims. And we may add, that in De Roux *vs.* Salvador, 4 Ad. & Ellis 420, Lord Denman says: "It is an arbitrary rule, not dictated by natural justice, nor possibly quite consistent with it."

While, therefore, it has found a place in American admiralty jurisprudence, it is not to be extended without grave reason beyond the losses to which it has hitherto been applied. That is, damage to the vessels themselves.

This Court has refused to let it apply to cargoes, by the late decisions which allow owners of cargoes to recover the full amount against both vessels when declared to be in fault, which, if the law of Continental Europe was applied, would not be the case, as it is a case of average of a common loss.

It is spoken of always as an average.

The question of dividing the loss is treated under the head of averages in the commercial code of France.

In Rogers *vs.* The St. Charles, 19 How., 108, this Court, in reversing the decree of the Circuit Court, and holding both vessels in fault, remanded the cause for "*an apportionment of the loss.*"

So also in The Sciota Davies, R. 364, per Ware, J. "But the maritime law, from considerations of public policy, divides the loss equally between them. The whole damage done to both vessels is put into one common mass, and each pays one-half without regard to the different values of the vessels where parties have been in fault."

In 1, Bell's Commentaries, page 581, it is said:

"It is in the case which lies between these two extremes that "the main difficulty is found; for the resolution of which rules "so different have been resorted to. This is the case where "both parties are to blame, or where there is some neglect or "fault which is inscrutable. By the maritime law this is a case "of average loss or contribution, in which both ships are to be "taken into the reckoning so as to divide the loss."

"In legal arrangement it belongs to the doctrine of average or contribution, and the point is whether it be not consistent with equity and expediency that the contribution of average of such a misfortune in the case of inscrutable fault as well as in the case of obvious loss on both sides, shall comprehend both ships to equalize the loss, as if all were embarked in the same bottom."

Story on Bailments, § 608.

"In such a case the loss must be apportioned between them as having been occasioned by the fault of both of them."

Now the present case raises the question whether in an action for personal injuries, a tort feasor, who is found personally to be in fault for a collision, can ask or receive contribution for personal injuries—pain and suffering; and whether the personal injuries of the crews of two vessels, where both are in fault, is to be brought into a common stock of suffering and pain, which is to be borne and to be compensated for equally by both parties.

MORTON P. HENRY,
For Philadelphia and S. M. S. Co.

Mr Justice Clifford

IN THE SUPREME COURT

OF THE UNITED STATES.

GEORGE PURSGLOVE,

versus

THE STEAMSHIP JUNIATA, HER TACKLE, &C.

BRIEF FOR LIBELLANT.

CARLETON HUNT,
DURANT & HORNOR,
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GEORGE PURSGLOVE,

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THE STEAMSHIP JUNIATA, HER TACKLE, &C.

BRIEF FOR LIBELLANT.

George Pursglove, owner of the steam Tug Neafie, has promoted a suit in Admiralty, sounding in tort, against the steamship Juniata, to recover twenty thousand dollars.

The allegations in the libel are fully sustained by the law and the evidence adduced on the trial.

ON THE FACTS.

I. The tort complained of, resulted from a collision between the Neafie and the Iron Propeller Passenger Steamship Juniata, an iron steamship of 1215 tons. The Juniata ran into and struck the Neafie, near Poverty Point, thirty miles below New Orleans on the Mississippi

River, sinking a Flatboat loaded with Cement, which the Neafie had in tow. The Neafie was seriously damaged by the collision, and the libellant, who was on the lookout on the roof of his boat, watching the Juniata as she descended the Mississippi, was hurled head foremost against the Steamship and thence to the deck of the Neafie, suffered grievous personal injury, and was made a cripple for life. Her signal lights all burning, the Neafie when she was run down was carefully guarded and steered, and was keeping close to the left bank of the river leaving room, ample and more than usual unobstructed room for the safe and convenient passage of all desending steamers. —Libel R. p. 2.

II. The collision was evidently due to the fault of the Juniata. It is especially noteworthy that only three of the crew of the Juniata were examined; Colton, first officer of the ship, Simpson, first-assistant engineer, and Thompson, the quarter-master. The only remaining witnesses for the respondent are Philips, pilot in charge of the ship, whose conduct is open to most severe censure, and Reinhardt, a passenger, who was asleep below deck when the tort was committed.

On behalf of the libellant *all the crew* of the Neafie were called and heard. The watchman on the Flatboat could not be had.

III. The weather was reasonably fair for navigation when the Juniata ran the Neafie down on the Missiissippi River near Poverty Point. Both vessels were going in the same direction. descending the stream. The Neafie being the vessel ahead was entitled to keep her course,

and the Juniata was bound, if she attempted to pass, to avoid a collision.

Libel, R. p. 1.
Hopper, pp. 17, 20.

Although McVey, on the Neafie says that "it was a thick fog where the Juniata lay," p. 22, he says that the night "was good enough for us." p. 26.

McFadden, another witness says "on the whole it was a suitable night for running." pp. 30, 31. and Westcassel, engineer of the Neafie, who says that he could not see anything on account of the fog," adds immediately, "on that side of the river," meaning on the right side alone, p. 32.

Williams, cook on the Neafie, it is true, says that "about 20 feet of us you could not see the ship at all for the fog." pp. 35, 37, but in another place he says "close into the shore you could see glimpses." p. 37, and again he explains "with my head up I could see the mast-head light." p 37.

The truth is intelligently stated by Pursglove, the libellant—he says: "It was a little foggy, which caused me to go out of the Pilot House upon the Pilot House to see how high the fog was, and watch the course of the boat, which the Captain was steering." p 55. He could see the Juniata three quarters of a mile off, and he says "on a tug when the fog rises and you are down below, there will be a low fog that will obstruct the sight, but when you get on top of the house you can see across the River on both sides." pp. 60, 61. And again, speaking of fogs at night, and in particular that on the night of the collision, "on the right bank the fog was

about 10 feet high from the water. It extended about one third of the way from the right bank." p. 61.

Vally, master of the tug Admiral, which was in the river one and three quarters of a mile astern of the Neafie says "I could see pretty well, I could see four or five miles each way. It was a very pleasant night, (p. 65,) there was a little fog, but not enough to say anything of because you could see over the top of it." p. 66.

Philips, pilot of the Juniata, himself also says "there was a little fog on the river—a low fog. The left bank of the river was quite clear, could see the shore going down. There was no fog on the left bank, the fog was from the middle of the river to the right bank, still I could see the right bank." p. 73, see also 74 et seq.

And Thompson, the quartermaster, declares distinctly "I could see both banks of the river." p. 85. "It was a fair night for running." p. 90.

The differences disclosed in the testimony above referred to are easily to be reconciled by a due consideration of the different standpoints of the various witnesses, as well as of the character of the fog on the Mississippi of which they speak.—Ency Am. Verbo. Fog.

To conclude this point, the night was evidently fair, and the 5th Article of the answer expressly says it was. The 5th Article reads. "Respondent admits that the night of the 10th February, 1872 was a reasonably fair running night."—Answer p. 8.

IV. The theory of the Respondent that the collision took place on the *right* bank of the river is erroneous. It took place on the contrary, just as the Libellant alleges it did, on the *left* bank of the Mississippi at a point about

one mile and a half below Poverty Point, and some thirty miles below New Orleans.

(a) Libellants witnesses concur on this point. Hopper, master of Neafie, says "The time she struck me I was not over 60 yards from the left bank." p. 11.

McFadden says "I should think about 100 yards" from the left bank. p. 27.

McVey, who says, that the starboard bow of the flat was torn off and jammed in by the Juniata, and that the flat was lashed to the port side of the Neafie," also says "the tug was close into the bank. I could see the bank by standing on the tugboats' rail." p. 22.—that is of course the *left* bank.

Westcassell says " * * I gave her a few turns and she fetched up in the mud of the bank. I looked out of the door after she was ashore, and I saw the flatboat right under our stern. I looked around at the *port side*, I could look out from where I stood, and I could see the flatboat under our stern. * * " p. 33.

Williams, says " * * we were over 200 yards, or 100 yards, as near as I can come at it," (p. 39) from the shore, meaning the left shore as it is submitted he expressly explains elsewhere p. 37.

Finally, Miller says, when the collision occurred that the Neafie was "on the port side—that is on the *left hand* going down," he adds "to the best of my judgment about fifty yards" from the bank—p 43.

(b.) The witnesses for the claimants on the contrary contradict each other.

Philips says, "As near as I could judge, she (the Juniata) was about three or four hundred feet" from the *right* bank—p. 74.

Thompson is quite certain the ship was in *the middle* of the river—pp. 87, 88,

Simpson, who ran up on the deck of the Juniata just after the collision, naturally enough, as it was dark, and he came out of the lighted engine room, is not positive that he saw *any bank*, but if he saw any at all, and he says, "I could see something that looked like a bank"—admits that it must have been the *left bank*—and gives the reason why—because he came up on the *port side* —p. 84.

Colton says that the Juniata was "nigher to the *right* bank considerably than (she was) to the left"—p. 91.

The answer of the claimants insists, too, that at the moment of collision the steamship was near the *right* bank of the river Answer p. 8.

(c) Vally, whose position on board of a third vessel, the Admiral, imparts to his testimony an independent character, such as is much to be desired in cases of collision, and such as is allowed much weight in the law of collisions—confirms in this connection, the testimony for the libellant.—p. 65.

(d) Any other theory than the libellants', which is that the collision occurred on the *left bank*, must be excluded upon due consideration of the manner upon which the Juniata steered, and the effect upon her movements of her propeller.

Thompson, the quarter-master, who was at the wheel when the collision took place, says, she carries a starboard helm, (pp. 88) that she is harder on one side than on the other, and goes faster around to port than she will to starboard (p. 90.)

It is submitted, therefore, that to round Poverty Point, the Juniata necessarily starboarded her helm, and if, and this appears to be the fact, the helm was astarboard about the time of the collision, it follows, the ship drifted to port, and getting her bow in the upward eddy shown in the diagram, got into the bank—the *left* bank, as described by libellants' witnesses, and by Vally of the tug Admiral.

Again, facts about which there is no dispute, exclude any other theory than that the collision took place on the *left* bank, and just where, or at least close by the spot where the flat was afterwards found.

The Juniata travelled at the rate of a mile in six minutes, and the tug boat Admiral (which the Juniata had passed higher up the river at McCall's flats) travelled at the rate of a mile in ten minutes. Until the Juniata doubled Poverty Point the tug kept her in view. But here the tug necessarily lost sight of the steamship; she sighted the Juniata again, when the latter was one mile below the point. Running as the Juniata did, it is evident it took her some six minutes after rounding the point to get one mile below it, and where the collision happened. Had she maintained her full speed, she would have been one and one-third miles, or eight minutes below the Point when the Admiral reached the Point. Travelling at a speed of one mile in ten minutes, the Admiral was four-fifths of a mile or eight minutes behind the Juniata when the latter rounded Poverty Point, The conclusion is inevitable. Eight minutes is the greatest time the Juniata could have been out of sight of the Admiral. The fact that instead of being one and one-third miles below the Point, the Juniata had only, it seems,

made one mile below the Point when the Admiral sighted her once more, is accounted for by the sheer the Juniata took into the left bank to strike the Neafie. The Juniata then was only out of sight seven minutes, and the claimants' theory that the collision took place on the right bank and that the flatboat was stranded only after it had been towed from the right over to the left bank, is entirely dissipated. It is an impossible theory; such a voyage would have been impracticable for the flatboat, which was in a sinking condition, and could not have been made without being observed by the Admiral.

This point in argument is fully explained in the answers of Capt. Howell, U. S. Corps of Engineers, to the questions addressed him by the libellant.

The court is also referred to the Diagram which demonstrates the correctness of Captain Howell's conclusions.

ON THE LAW.

I. In cases of collision, all rules are subordinate to the principles of common sense and these principles condemn such a course as the Juniata took.

Conk. U. S. Adm. Vol. 1 p. 410.

Opinion of Davis J. quoted in argument.

Of two steamers going in the same direction the one ahead, like the Neafie, is entitled to keep her course; and the one astern, like the Juniata, if she attempt to pass, must avoid a collision.

1 Parsons Shipping and Adm. p. 569 and authorities there cited.

II. Applying these rules to prevent collisions, with

the principles of common sense, to the situation of the Neafie, it will be seen that she had a right to be where she was, when the collision with the Juniata occurred, going slowly, close to the left bank of the Mississippi, about one mile below Poverty Point.

Hopper says, the Neafie was there to avoid risks in the fog and "out of the track of ascending and descending vessels," and in particular to avoid "the Juniata, which I (he) knew was astern of me." (p. 11.)

Miller says. "she (the Neafie) was looking for a landing at the time" (of the collision.) pp. 42, 43.

Pursglove says, the reason for his running close into the left bank was "that it was very foggy on the right bank, and our object was to make a landing, if it got so foggy we could not see * *" (p. 57.) He adds also, the Neafie had gone over there to give the Juniata plenty of room. (p. 57.)

McVey says, "she (the Neafie) could not be going over three miles or three miles and a half an hour. (p. 23.)

Hopper says, all the lights were burning on the Neafie; p. 11. McVey says, that he had observed them burning fifteen minutes before the collision. (p 27.) and so does Williams, (p. 36.)

Miller names the lights. He says:—

"Two bright white lights on the chimney, and a red on the port and a green on the starboard." The examination proceeds: "Whose duty was it to trim those lights? A. "Mine." "I trimthem all" Q. "At the time of the collision were all these lights burning?" A. "They were." (p. 43.)

Finally Hopper, who was at the wheel when the collision happened, when asked "what other men were on duty?" says, "Myself, deck-hand, engineer, fireman, cook watchman." (p. 25.)

The libellant himself was on the lookout, had a look out been necessary. (p. 55.) Hearing the whistle up the river, he was up on the roof of his boat, watching the Juniata as she descended. (p. 55.)

These precautions were all sufficient. No special lookout was required in such a case on the Neafie, because such a lookout could not have guarded against the collision, and the absence of such a lookout had nothing to do in causing it. The Farragut. 10 Wall. 334.

III. A maritime tort, like the one committed by the Juniata, causing personal injuries, gives rise to a lien.

The Rock Island Bridge, 6 Wall. p. 213.

The Maverick, 1 Sprague Dec. p. 31.

Hiner vs. The Sea Gull. Law Times, vol. 2, p. 15.

Price & Price vs. The Highland Light. Law Times, vol. 2, p. 119.

The New World, 16 Howard p. 472.

Steamboat Co. vs. Chase, 16 Wall 532.

And on the suit of a party injured like the libellant, consequential damages will be decreed in the Admiralty.

Chamberlain vs. Chandler 3 Mason 243.
Plummer vs. Webb 3 Mason 380.
Tabor vs. Jennings et al. 1 Sprague Dec. 5, 315.
The Betsy Caines 2 Hagg, pp. 29, 30.
2 Parsons Shipping and Admiralty pp. 350.
2 Conklings U. S. Admiralty, pp. 444, 448-

IV. The personal injuries done the libellant, are described by Doctors Logan and Holliday, two learned and experienced surgeons. R. pp. 46, 47, 48.

The libellant was a strong active man, of great personal vigor. He is now ruined and a total wreck. Examined since the appeal from the Circuit Court, Doctor Holliday says: "Before the injury he was a man possing more than an ordinary share of perseverance, industry, activity and physical vigor. Now he is a man whose mental activity appears to have become as unsteady and vascillating as his gait; he is physically a cripple. * *" R. p. 151.

The Libellant's pecuniary loss is shown by the destruction of his business. Ivens, one of the witnesses calls it *the first business* of any single tug boat in the harbor of New Orleans, p. 64, and the character of the business and its usual profits are shown by the libellant himself. See his testimony, pp. 55 *et passim*, and that given by Hopper, pp. 20, 21; Ivens, p. 64; Patton, pp. 64, 65.

There besides the damage to the Neafie. A survey of her condition after the collision was made by experts (Exhibit A. R. p, 3.), and this survey shows the injury done the hull etc., to amount to $1205. The *libellant* lost too $160, bill for towage of the flat boat, contracted for with the United States. See also, testimony of the experts, Lester and Eaken, pp. 50, 51, 52 53, 54. Finally, the bills of the surgeon and the apothecary, incurred by the libellant during the illness consequent upon his injury, amount to $319 25. See pp. 47 and 49.

V. The District and Circuit Courts both rendered judgment in favor of the libellant for ten thousand dollars. All parties appealed. The sole doubt with the District Court was as to the locality of the collision, *i. e.*, whether it happened on the right or the left bank of the river.———the Judge said if he had been satisfied that the collision occurred as the libellant alleged, close to the *left*, bank, he would have pronounced for the full amount of $20,000. Mr. Justice Bradley, who sat in the Circuit Court. affirmed the judgment of the lower Court. It is submitted that the evidence establishes conclusively that the libellant was right, and that the tort was committed by the Juniata, exactly as the libel charges, close to the *left* bank of the Mississippi, about one mile below Poverty Point.

In cases as clear as this the Supreme Court does not hesitate to reverse the judgments below. The Lady Pike 21 Wall. p. 1.

Respectfully submitted

CARLETON HUNT.
DURANT & HORNOR,
Proctors.

In the Supreme Court of the United States.

October Term, 1876.

GEORGE PURSGLOVE
vs.
STEAMSHIP JUNIATA.

No. 628.

Appeal from the Circuit Court of the United States for the District of Louisiana.

Supplemental Brief for George Pursglove, Libellant and Appellant.

The allegations of the libel and the answer thereto are so divergent, and in some essential particulars are so contradictory, that in the absence of any finding of the ultimate facts by the circuit court we beg leave to set them forth as we conceive them to stand proved upon the record. We shall do so, giving the uncontradicted facts first.

First. Saturday, February 10, 1872, between the hours of 10 and 11 P. M., there was a collision on the Mississippi river, about $\frac{3}{4}$ to $1\frac{1}{2}$ miles below Poverty Point, between the tug *Neafie*, towing a flat-boat ladened with cement, and the steamship *Juniata*, resulting in the damage, compensation for which is claimed in this suit. Poverty Point is about thirty miles below New Orleans.

SECOND. The tug was 72 or 75 tons burthen, 90 feet long, built of iron-boiler sheets, upon timber frames. The tow was a flat-boat, lashed to the port-side of the tug with three ropes, one at the bow, one at midships, and one at the stern. The flat-boat projected 25 or 30 feet beyond the bow of the *Neafie*. The *Juniata* was an iron propeller of 1215 tons. Both the tow and propeller were descending the river, the tow bound for Fort Jackson, and the propeller bound for Philadelphia.

THIRD. It was a good night for running; no fog but in the bend of the river, from the shore of which it gradually lowered to the surface of the water towards the middle of the river.

FOURTH. Descending vessels have to follow the bend, keeping down on the right bank and nearer to it than to the left bank, in order to be out of the way of ascending boats.

FIFTH. The *General Sherman*, the *Bradish Johnson*, the *Admiral* had all left New Orleans the same evening, and were descending the river at the same time. The *Bradish Johnson* and the *Admiral* were within a mile or two of the collision at the time it happened.

SIXTH. The tug and the tow were very low, and the *Juniata* very high, in the water. The former left the city at from 5 to 5½ o'clock P. M., from alongside of the *Juniata*, the flat with a cargo of imported cement taken from out the propeller. The rate of speed by the tug and tow was about five or six miles per hour, with the current.

SEVENTH. The *Juniata* left about 7½ or 8 o'clock P. M., and ran nine or ten miles an hour with the current.

EIGHTH. The results of the collison were the sinking of the flat-boat, with loss of all her cargo, on account of the breaking or smashing or tearing out of her check-post, and taking out her whole end. She was subsequently pushed ashore by the *Neafie*, on the left bank of the river, in order to save boat and cargo. Injury to the *Neafie* was the doubling up of her iron sheets on the side; pilot-house knocked over to one side and broken loose from the deck, and springing of her decks and bits. The most serious damage was, however, that happening to libellant, who was knocked off from the *Neafie's* pilot-house against the side of the *Juniata*, and who fell on the starboard side of the *Neafie* to the deck, in the narrow passageway between her pilot-house and guards.

Thus far the facts are beyond doubt, and established by the testimony of witnesses on both sides. But as to some of the material facts connected with the collision, the divergence in the testimony is so great that if a single one be found in favor of the libellant it would probably dispose of the case at once. Such, for instance, is the doubt propounded by the judge of the district court: "ON WHICH SIDE OF THE RIVER DID THIS COLLISION TAKE PLACE?"

The allegation of the libel is that the *Neafie* was keeping close to the left bank, and that the *Juniata*, instead of keeping on the course of vessels descending the Mississippi, steered with great velocity almost directly across the river, and ran into the *Neafie* and her tow.

The answer is, that the steam-tug was discovered well on the port bow of the *Juniata;* * * * * that said steam-tug was crossing the river, rapidly approaching the course of the *Juniata;* the steam-tug continued her course with her helm aport, [which brought her across the course of the steamship,] and with her tow ran into and struck the *Juniata;* that, at the moment of collision, the steam-

ship had steerage way only, and was near the right bank of the river; that it was with great difficulty that the steamship was saved from going aground, &c., &c.

Now, it seems to us that both of these statements cannot be true; and if one of them be false, it is fatal to the propounder. Our position is that the collision took place on the left bank.

We prove it by a great numerical preponderance of witnesses. It is probable, and consistent with all the other facts; in particular, with two of them. First, the condition of the flat-boat after the collision, and the impossibility of towing her any distance before sinking. Second, the ownership of Pursglove in the *Neafie* and his personal anxiety and care for his property. But the key to the problem is furnished by the fact set forth in the foregoing paragraph 8. If the tug had run into and struck the *Juniata*, as alleged, Pursglove would have fallen to the larboard of his wheel-house, and not to the starboard.

If the theory be false that the *Neafie* ran into the *Juniata*, then the whole case of the claimant fails, even on his own allegations; for he admits he ported his helm when he first discovered the *Neafie* "well on his port bow," about the middle of the river, about a thousand or twelve hundred yards distant; that he took the *Neafie* for an ascending boat; that she blew one whistle, and that he answered it with one, and ported the helm still more, and kept her close to the right bank; all of which are in strict and definite conflict with the fact that the collision took place on the left bank, and entirely irreconcilable with it.

See Answer, Paragraph 4, page 7 of Record.

The court will notice that if the *Neafie* was descending the river on the left bank every step was a fault on the

part of the *Juniata*. So much are the facts alleged and partly sworn to by claimant at variance with the facts alleged and proved by libellant and his witnesses, that there is no safe resting place for the mind unless we are convinced that the defence is one huge error on the part of claimant, or that all the libellant's witnesses have sworn falsely, or that another boat signalled the *Juniata*, and soon thereafter ran into her.

But that the *Juniata* had done some damage on that evening to something was well known; for the engineer, Simpson, says, on his direct examination, he would not have known anything of it (the collision) "except hearing "somebody say that we ran into a boat, and somebody was "thrown overboard," (Rec., p. 83;) and Reinhardt (Rec., p. 121) had a conversation with the pilot of the *Juniata* the night of the collision, about six or eight hours afterwards, at the passes of the river, when the pilot made statements to witness upon which, afterwards, the chart B was made. Considering the defence as a whole, and abstracting the case as made by libellant, it is extremely difficult to avoid the suspicion that the claimants have made up their testimony and map more to suit the exigencies than the real facts of their case.

But it is not only necessary to discredit all the witnesses who were on the *Neafie* at the time, but also the testimony given by Vally, master of the tug *Admiral*, descending the river only about one and a half miles behind the *Neafie* and *Juniata* at the time of collision.

Rec., p. 68, folio 199.

NINTH. The collision took place on the left bank of the river.

TENTH. Both the *Neafie* and *Juniata* were tight, &c.,

and well manned, tackled, appareled, and appointed. And the flat-boat in tow was in good order, and properly lighted and guarded and steered.

ELEVENTH. As to the lights on both boats, as required by the rules. There is no allegation or proof of any deficiency on the *Juniata* in this respect. But there is an averment in the answer that when the tug was discovered "well on the port bow," "without any of the usual and "necessary lights to indicate her character or course," &c. But this is qualified almost immediately by a parenthesis, ("although no light, *except one white light*, was visible on "her.")

Phillips, the pilot of the *Juniata*, testifies that at first he saw no lights at all; then the green and red lights, but no white light, either on the *Neafie* or the barge. The latter fact he reasserts at least three times. (See Record, p. 73, folio 215; p. 77, folio 226; p. 78, folio 232; p. 79, foot of 234.) Colton testifies to the same effect, and he was first officer of *Juniata*. (P. 94, folio 281; p. 97, folio 290.)

We submit that the testimony is overwhelming that there was no deficiency of any of the lights required by law, on the part of the tug and tow. The testimony of Vally, of the *Admiral*, is conclusive on this point, corroborating the witnesses who were on the tug.

TWELFTH. The *Juniata* stopped her engines, but soon started them again to go ahead, to avoid the bank. She literally made no *stop* in her course down stream. She passed the *General Sherman* before she got to Pilot Station, South-West Pass.

THIRTEENTH. Prior to the collision, and whilst passing the *Admiral*, the movements of the *Juniata* attracted the

attention of the captain and cook of the former boat. "He "was * * * on the opposite shore, going down on "that side, from what he should be following the bend "shore. * * * He followed no bend at all. HE MADE "SHORT CUTS OF IT."

Record, p. 66, folio 193.

FOURTEENTH. The tug and tow were descending the river, out of the route of descending boats and within a few yards of the left bank, when the collison occurred; and it was out of the question for the *Juniata* to pass between the tow and the left bank.

FIFTEENTH. In conformity to Rule 8 (Rec., p. 136) the *Neafie* waited for the signal from the *Juniata*. It is admitted that none was given, but that the *Neafie* was erroneously taken for an ascending boat, and that the signal given by the *Juniata* was an *answer* to a signal supposed to have been given by the *Neafie*, but in fact never was made by her.

ASSIGNMENT OF ERRORS.

I. The learned judge presiding at the circuit erred in not awarding to libellant full compensation for the damage done to the *Neafie* by the *Juniata*, amounting to the sum of twelve hundred and five dollars, as found by the referee.

Record. p. 126.

II. And in rendering a decree in favor of libellant for ten thousand dollars, instead of the twenty thousand dollars claimed in the libel, on the grounds therein set forth.

III. And in decreeing the claimants to pay half of costs of suit, when they should be made to pay all costs.

IV. And in not specially finding that there was fault on the part of the claimants, which made them liable in law to pay all the damages resulting therefrom.

V. And that there was no fault whatever on the part of the libellants.

ARGUMENT.

Many of the observations in the opinion in the *Great Republic* (23 Wallace, p. 20) may be applied to this case. The error committed by the pilot of the *Juniata* in assuming that the *Neafie* was an ascending boat, and acting on that assumption, affords no excuse; and disaster having resulted from it, "the consequences must rest on the boat "he is guiding." "The precautions against danger, of "necessity, in any case, rest to a greater extent upon the "boat in the rear than upon the boat in advance, and this "is eminently true of a large and fast steamer following "a small and slow boat."

Ibid., p. 32, quoting Whitridge *vs.* Dill, 23 How., 454.

But assuming that the court will find from the evidence that the *Juniata* is liable for all the consequences of the collision, the important question remains, How should the amount of the damage done to the person of Pursglove be ascertained? We can readily reach a conclusion as to the indemnity in damages Pursglove should recover for injury done to the tug; but for injury to his person the calculation is more difficult. Pursglove's age was forty-four years in July, 1872. (Rec., p. 48, folio 141.) By the Carlisle tables his expectation of life was twenty-five years and a fraction. Assuming he made $2,000 per annum net, which is an extremely low estimate from the evidence, and that the collision incapacitated him for life, as the evidence

clearly shows it did, by the same tables, at six per cent., an annuity which would yield him him the annual return of $2,000 would cost 11,551 × 2,000 = $23,102. That is considerably more than the amount claimed in the libel—say over twenty-three thousand dollars.

Nor will it escape your Honors' attention that in this case the pecuniary damage to Pursglove is actually larger than if he had been killed outright, which is the foundation of the above calculation. The testimony of the physicians points to no improvement in his condition for the future. "He is physically a cripple," and hence a perpetual source of expense and trouble to those who must take care of him.

Rec., p. 151.

We respectfully submit, therefore, that in this case no sufficient compensation has been awarded appellant by the court below, and that the judgment should be amended in his favor.

Respectfully submitted.

CARLETON HUNT,
DURANT & HORNOR,
for Libellant and Appellant.

WASHINGTON, D. C., *December* 2, 1876.

IN THE SUPREME COURT

OF THE UNITED STATES,

IN ADMIRALTY.

GEORGE PURSGLOVE,

versus

THE STEAMSHIP JUNIATA, HER TACKLE, &C.

BRIEF IN BEHALF OF LIBELLANT.

George Pursglove, owner of the steamtug Neafie, has promoted a suit in admiralty, sounding in tort, against the steamship Juniata to recover twenty thousand dollars.

The allegations in the libel propound an interesting and important case, and are, it is submitted, fully sustained by law and the evidence adduced on the trial. They set forth substantially, that on the night of February 10, 1872, a fair night for running on the Mississippi, the tug boat Neafie was engaged in the regular course of her trade, in towing a flatboat loaded with cement, for the United States, from Jackson Square to Fort Jackson, and had reached, between 10 and 11 P. M., a point

about one mile and a half below Poverty Point on the river, and some thirty miles below New Orleans, where she had a perfect right to be: that she was staunch and in every respect well appointed as was the flatboat she had in tow, and was carefully guarded and steered; that in this condition the Neafie, with her signal lights all burning, and the usual and necessary officers and men all at their posts, was keeping close to the left bank of the river, leaving room—ample and more than usual unobstructed room—for the free, safe and convenient passage of all descending steamers.

That the Juniata, then on her way from the port of New Orleans to the sea, an iron propeller of great power, descended the river, until she came to Poverty Point, and instead of keeping on the course of vessels descending the Mississippi, as it was her duty to do, steered with great velocity almost directly across the river, pointing straight for the Neafie and, with great force and violence, ran into and collided with her and the flatboat which she had in tow.

That the Juniata struck the Neafie with great violence forward of her pilot-house on the starboard side, causing her to carreen towards the shore on her port side, knocked away and took the head completely out of the flatboat, and which, in consequence, soon filled and sank with her entire cargo: and that the collision hurled the libellant, who was on the roof of the pilot-house of the Neafie watching the movements of the Juniata, fifteen to eighteen feet from the pilot-house to the deck below, broke three of his ribs, produced concussion of his brain and spinal cord, rendered him insensible and subjected him to great pain, anguish, and suffering of body and mind; that he

has been to heavy expense for surgical and medical aid and treatment; to serious and ruinous losses in business, throwing him out of employment and trade, injuring his tugboat to the amount of one thousand and fifty dollars, depriving him of the towage of the flatboat, one hundred and sixty dollars contracted for with the United States, and other towage; and incapacitating him for a long time, and probably permanently from following his vocation. That libellant has a wife and six children for whom he was able to provide abundantly by the profits of his business; that up to the time of the collision, damage, and injury done him, he was a strong and active working man, quite popular and prosperous, accustomed to make two thousand dollars per month during the business season, and to secure employment for each coming year, but that in consequence of the injury thus done him, he is now crippled, lives in pain, and reduced in circumstances, without an opportunity of forming contracts to provide for the future; and that he has sustained damages to the amount of twenty thousand dollars which were occasioned by the utter carelessness, wanton and malicious mismanagement and tortious conduct of the persons on board the Juniata, her master and crew. R. pp. 1, 2, 3.

The answer of Pierce F. Hoxie, master of the Juniata, in behalf of her owners the Philadelphia and Southern Mail Steamship Company, admits, that the night of February 10, 1872, was a reasonably fair running night. It charges that neither the Neafie nor her tow carried the lights required by law. The answer avers besides, that the steamship Juniata after passing Poverty Point, which is on the left bank of the river, and when about the mid-

dle of the river, and intending to descend near the right bank, in the stretch below, as is usual and customary, discovered a vessel which afterwards proved to be the Neafie with a tow, well on the port bow of the steamship; and that immediately the helm of the Juniata was ported in order to pass between the Neafie and the right bank; that shortly after, when nearing the usual signalling distance, the Neafie blew one blast of her steam whistle indicating that she would go to the right, and immediately thereafter one signal of one blast of her steam whistle was given in answer by the Juniata; that it being the duty of an ascending boat to select or choose the side on which she would pass, the officer on watch on the steamship, when the tug gave this signal, was satisfied that it was an ascending steamer, (although no light but one white light was visible on her) and ported the steamship still more, to give the tug abundant room to pass on the larboard side of the steamship. That it was promptly discovered thereupon that the tug was crossing the river rapidly approaching the course then being properly pursued by theJuniata. That the engines of the Juniata were reversed at once and she commenced backing, to stop as quickly as possible, and her helm was put hard aport, but that notwithstanding all her efforts to the contrary and although her pilot hailed the Neafie, the latter continued her course with the helm aport (which brought her across the course of the steamship), and with her tow ran into and struck the Juniata on her larboard side about ten feet abaft the fore-rigging: and that the steamship had steerage way on only, when the collision took place, and was near the *right bank* of the river, so that she was

with great difficulty saved from going aground by putting her helm hard a starboard.

The respondents then proceed to charge that the collision referred to was caused solely by the unskillfulness, mismanagement, reckless conduct and ignorance of those in charge of the steamtug Neafie. R. 6, 7, 8, 9.

All those who were on board of the Neafie when the collision occurred, seven in number, including himself, were sworn and examined for libellant. The respondents have thought proper on their side to produce only five witnesses.

Henry C. Hopper, an experienced pilot (R. pp. 9, 10), of the Neafie, who was at the wheel in command of her when the collision occurred, when asked how close she was at the time to the left bank, answers that at the time the Juniata struck the Neafie he was "not sixty yards" from the *left bank*, (R. pp. 11) inside of the track of vessels ascending the river coming along that bank. That is to say "between the track of an ascending vessel and the bank." R. p. 11.

John McVey, fireman on the Neafie, swears: The tugboat was close into the bank, I could see the bank by standing on the tugboat's rail. R. p. 22.

James McFadden, another firemen on the Neafie, who was on deck at the time of the collision (R. p. 27), in answer to the question "whereabouts in the river the latter then was," responds "On the *left bank* a little below Poverty Point," and again when asked "how far from the left bank?" "I should think about a hundred yards." R. p. 27.

Samuel Williams, the Neafie's cook, who when the vessels collided, sat in the galley, playing on the violin

on the starboard side of the tug, declares that it was "on the *left bank* going down" (R. p. 34) "when the Juniata ran into the Neafie." Further on in his examination this witness was asked: "You say you were running on the left bank, were you near the bank?" And thereupon proceeded to describe the situation: "Yes sir, I could see the shore by glimpses, you could see nothing out in the river, and those that were on board the ship I do not suppose they could see anything in the river. * * * " R. p. 37.

The engineer of the Neafie, Mr. Westcassell, who testifies, that the first he knew about the steamship was when he saw her light (R. p. 32), adds, "I was standing in the engine room, and I walked over to look out of the door of the starboard side. I could not see anything on account of the fog on that side of the river." (R. p. 32.) Westcassell started promptly into the engine room and stood by the gear. When the bells rang he slowed the engine, and when the signal to stop was given, shut the throttle, and he continues "saw the steamship's bow coming past the bow on the starboard." R. p. 32. According to his statement, all lights on the tug were then extinguished by the collision, and he saw nothing more for the time being. But the position of the Neafie close in to the *left* bank is to be necessarily inferred from what immediately ensued. "The bell rung to go ahead again" (resumes Westcassell). "I gave her a few turns and she fetched up on the mud of the bank. I looked out of the door after she was ashore, and I saw the flatboat right under our stern. We backed off again and shoved the flatboat in on the bank." * R. p. 33.

John C. Miller, whose place on the Neafie, on the night of 10th of February, 1872, was that of acting deck hand (R. p. 42), and who, like McFadden, was on deck when the collision happened, and therefore had the best opportunity for observation, when the question was distinctly put him in behalf of the libellant: "On which side of the river was the Neafie when the collision occurred?" states in so many words: "*On the port side—that is on the left hand going down.*" "How far from the left band was the Neafie when the collision occurred?' proceeds the examination: "To the best of my judgment about fifty yards.' R. p. 43.

Q. "What did you do with the flatboat after the collision?"

A. "We started for the *left* bank with it. We could not get in at first; we grounded; we then let go of it and shoved it in end on."

The testimony of the libellant himself, the intelligence and truthfulness of whose general narrative, up to the time when he was hurled from his position on the lookout and left insensible on the deck of the tugboat, will arrest the attention of the Court, is equally clear with that of Miller in relation to the matter at present under discussion, the position occupied by the Neafie when the Juniata struck her. The libellant says:

"I looked at our course, we were then proceeding down the *left bank* at about two hundred feet from the shore. We were close to the bank. * * * Rec. p. 55.

That this was really the fact, it may be now assumed has been abundantly shown. The testimony which has

been considered involves no contradictions on the part of of the officers and crew of the Neafie, and reveals only such differences of judgment among them, as to distance as are always to be found in such cases, and are naturally accounted for by the various temperaments and habits of the witnesses, the differnent duties in which the accident found them, and the several standpoints from which their observations were made.

The language of Dr. Lushington in the Shannon. 1 W. Rob. 468, seems to be directly in point in this place. "It would be contrary to the usual practice in these cases," said he, "to bind the witnesses down to precise words, more especially as regarding distances at night, which it is impossible to state with any certainty or precision."

The circumstances already mentioned and related by Westcassell (whose means of knowing the truth on such a matter cannot be doubted), that it took but a few turns of the engine on the Neafie, which he himself controlled, to take her ashore, from whence the flatboat was discernible under the stern of the tug, is strongly corroborated (R. p. 33) by Captain Hopper, who saw, after he had run the Neafie into the bank, the flat lying at a distance of eighteen or tweenty feet astern (R. p. 19); and by Williams besides, who says that after he had let go the head and tow lines, and cast off the flat from the Neafie, the latter then got ashore, and then adds: "If we had a pike pole we could have caught hold of her then." R. p. 37.

An effort was made by the respondents, an unavailing, if not a feeble one, to overthrow the testimony of libellant's witnesses which has now been reviewed, and

to make out the allegation in their libel that the collision which is the subject of this suit, happened on the contrary, on the *right bank* of the Mississippi. George M. Philips, the pilot of the Juniata, whose conduct is exposed in this suit to reflections of the gravest character, was the first witness introduced for this purpose: "How near was the Juniata to the *right* bank when the collision occurred? was he asked by the respondents, proctor: "As near as I could judge" is the answer "she was about three or four hundred feet." And again: "Was the right bank clearly visible there?" Answer "Yes sir." R. p. 74.

But this testimony is unsupported and merits to be confronted with the testimony fnrnished by the remaining witnesses of respondents.

William L. Simpson, for example, who held the responsible position of first assistant engineer of the Juniata (R. p. 83), and who was the only licensed man on watch (R. p. 83), when the collision took place, relates that he came up on deck, took a look out, enquired what was the matter, and ran right back.—R. pp. 83.

"When you came upon deck" (was very naturally the first question put under cross-examination) "did you come up on the starboard or on the port side?"

A. "On the *port side.*"

Q. "Could you see the opposite side of the river?"

A. "I could see something that looked like like the bank, but it was pretty dark, and it was very dark to me coming out of the light, so I could scarcely see anything, I did not attempt to see anything."

Q. "You came up on the port side. If you saw the bank when you came up on the port side what bank of the river must it have been?"

A. "The *left bank*, but I could not be positive about that, for any object would look like a bank." R. p. 84.

Again, Thomas Thompson, quartermaster of the Juniata, who was at the wheel (R. p. 85), where both banks of the river could be seen by him (R. p. 85), the windows on each side of the pilot-house, where he stood, being open (R. p. 88), when interrogated as to what part of the river the Juniata was in at the time of the collision, replies: "About the *middle* of the river" R. p. 88); and the same witness when followed up under cross-examination, absolutely refused to make good the assertion of Phillips, on which the theory of respondents that the Neafie and Juniata collided on the *right bank* would seem to depend. Let Thompson therefore be now heard:

Q. "I think you said you thought you were in the middle of the river?"

A. "We were in the middle of the river as near as I could say."

Q. "Then is it not true that you were close to the right bank?"

A. "*I could not say she was close to the right bank.*" R. p. 88.

Lodge Colton, the first officer of the Juniata, during whose watch on deck, the collision happened, was next called upon by the respondents, but notwithstanding the zeal displayed by him, this witness could not be brought to confirm the rash assertion of Phillips. It was too much

even for him, as the court will judge by the following extract from the printed Record:

Q. "On nearing Poverty Point, what course did your vessel pursue?"

A. "Do you mean coming around the point"

Q. "In coming around the point, towards which side of the river, or along what bend did your vessel run?"

A. "She kept in the centre of the river towards the right bank."

Q. "She could not be in the center and towards the right bank?"

A. "I say nigh the centre towards the right bank; nigher to the right bank if any of the two." R. p. 493.

There remains singular to say, when it is remembered how many persons are to be found on ships like the Juniata, only one witness for the respondents, unnoticed until now. We refer to Louis Rienhardt, (R. p. 13) a pilot ever since 1839, and now licensed by the Government. Reinhardt boasts perfect familiarity with the Mississippi River, from New Orleans to the mouth (R. p. 13). He does not profess engineering it is true (R. p. 118); but he undertakes at the same time, to pronounce (R. p. 116) the drawing of the river executed by Captain Hopper, to illustrate the testimony of the latter, incorrect and faulty. He has himself prepared a better for respondents, which at one moment, he is obliged to confess is only approximative in character, but which he *thinks*, in the same breath almost absolutely correct, only he cannot affirm that it is, as regards the width of

the river (R. p. 122). He does not know the course that the Juniata took up to the time of the collision (R. p. 121); nor that held by the Neafie, nor that it was the Neafie he saw in the river, on the night of February 10, 1872; nor where the collision between her and the Juniata in the Mississippi did occur, whether in the middle, or on the right bank, or on the left bank (p. 121.) He has wonderful confidence in his own knowledge and ability to estimate distances on the water in the darkness of a foggy night. (R. p. 119.) He knows the profitable art of testifying in part from mere inference and conjecture; and at second hand, from the statements of the reckless and savage pilot of the Juniata. George M. Phillips, with whom he talked about the collision when they arrived the morning after it, at the head of the passes (R. pp. 120, 121.) He does not even pretend, as has been seen, that he witnessed the collision, because a passenger only as far as the mouth of the river, he was sound asleep at the time in his breeches, below deck (R. p. 116); he has nevertheless executed (and without doubt with impartiality), some eight months afterwards (R. p. 121) and for the sum of thirty-five dollars (R. p. 122) respondents sketch of the collision, which this very Phillips, directed, and in which the latter has suggestively located for the Court, the relative positions of the Neafie and Juniata (pp. 121 *et passim*). Finally, to do Reinhardt entire justice, it ought not to be ommitted that he is brought to admit at last—although with relutance becoming his disposition as a witness, amid hesitation and prevarications, that when he did appear on deck after the collision, where he remained ten or twelve minutes, the

Juniata was about the middle of the stream, and the Neafie three or four hundred yards distant on her port quarter, perhaps twenty or thirty yards nearer the *left bank*. R pp. 119, 120.

Pausing now in argument, to determine how far the averment of respondents, that the collision under discussion took place near the right bank of the river, is sustained by their own testimony just subjected to examination, it appears that George M. Phillips, and he alone affords support to this theory, while Thompson and Colton, contradicting him, fix the locality of the accident about the middle of the river. Simpson the engineer being evidently of the same opinion with all the witnesses for the libellant, that it took place near the *left bank*, and the testimony of Reinhardt, if it be worth any thing at all, inevitably tending to the same conclusion.

Nor, fortunately for the cause of justice, is it to be forgotten, that at the time the Neafie turned Poverty Point, she was closely followed at a distance of a mile and a half by the Admiral, another steam tugboat. (R. p. 66.) The latter bound down the river to Point a la Hache Courthouse (R. p. 66), had been passed by the Juniata in the stream at Doyle's, a point a little over twenty-eight miles below the city, where Chris. Vally, master of the boat, had his attention attracted by the Juniata:

"My cook," says Vally, "called my attention to "she was then astern of me, he said: "Captain, here "is a vessel coming down, seems to be going to run into "McCall's flats." I put my head out of the window to "see what was the matter. I said, I guess that fellow is "going to put that ship ashore. He said, "at the range

"he was taking *he must be crazy.*" I paid attention "then to my boat, now and then looking out to see him. "She sheered over the point of the flats, and struck in a "line *right for the opposite shore*; for the other point on "the opposite bank of the river. When he passed me "he was what we call at the Willows, on the opposite "shore going down on the side. A man going down the "river ought to follow the bend, *but he followed no bend* "*at all.*" R. p. 66.

Vally describes how his boat gained on the Neafie all the time (R. p. 66.), and passed her at a distance of forty-five or fifty feet, about three-quarters of a mile under Poverty Point, where the flat lay wrecked, with her whole end knocked out. (R. pp. 66, 67.) He could tell the Juniata by her *loom*, as he expressively terms it, going ahead of him all the time (R. p. 68); and saw her too when she turned the point (R. p. 69); lost sight of the Juniata, when repeating her previous irregular unaccountable and dangerous course at McCall's flats, she went over to the opposite shore at Wilkinson's on the right bank (just as libellant's witnesses describe her before she steered directly across the river for, and ran into the Neafie); thinks the Neafie turned to the *left bank* as near as he could judge from the way in which she rounded the point (R. p. 66), as she certainly did, because there, as he now tells us, Vally himself found her immediately afterwards; and declared, moreover, he could see her smoke "as plain as could be" R. p. 66, and "all the time" R. p. 68; and there being no trees on the point, actually saw the Juniata over it, but nothing but the smoke of the Neafie, she being small. R. p. 69.

The right of a boat situated like the Neafie to be on the left bank of the river, exactly where she was, is well recognized in the Admiralty. Rules in respect to navigation, it is always to be borne in mind, are subordinate to the rules of common sense. If in obedience to a rule a vessel be pursuing a certain path, and by pursuing her course at variance with the rule she might avoid a collision, it is her duty in such a case to do so, notwithstanding the rule of navigation; and where, as in the suit before the court, there is evidence going to show the existence of a usage simply, like the one which is here established in the case of vessels descending the Mississippi river, upon rounding Poverty Point, to keep to the right bank, this usage must necessarily be made to yield and give way even more readily than would fixed regulations, whenever injuries to property or person are thus to be prevented.

In a case before the District Court of Massachusetts, Judge Davis having taken the opinion of some distinguished nautical men upon certain questions pertaining to navigation, they declared their rules to be: "All subordinate to the rule presented by common sense, and applicable *to all cases under any circumstances*, which is, that every vessel should keep clear of every other vessel when she has the power to do so, notwithstanding such other may have taken a course not comformable to established usage." The same general doctrine is enunciated in the case of Hope, 1. W. Rob. 154, and laid down as a great pervading one; and in the excellent text book of Judge Conkling, in concluding his summary review of the nautical rules, devised to prevent the collision of ships, is expressed, by that writer, as follows:

"That it is the duty of persons entrusted with the "navigation of vessels of whatever description, a duty en- "joined by law as well as humanity, to avoid a collision "with other vessels if possible. It follows as a corroliary "from this obligation that no navigator is bound, or has a "right pertinaciously to adhere to a rule of the sea, when "he would incur the danger or increase the probability "by doing so. If he clearly foresees that disastrous conse- "quences are likely to ensue from such a course, having "power to avoid them, he is bound to exert this power." 1 Conk. U. S. Ad. p. 410.

In the application of these authorities to the case of tne tugboat Neafie, it becomes necessary in this place to investigate the cause for her hauling in close to the left bank of the river as she did after reaching Poverty Point. Captain Hopper was examined on this subject, and his testimony will be found to furnish the explanation at present required. Reference is therefore made to it again.

Q. "What is the reason that you, instead of going around the Point and going around the middle of the river, that you went in close into the left bank?"

A. "Knowing I would be out of the track of the descending or ascending vessels."

Q. "When you say descending vessels, what do you mean in particular?"

A. "The Juniata, which I knew was astern ef me." R. p. 11.

Again, Miller, the fireman, where he accounts for his appearauce on deck, at the time of the collision, says:

"I was called forward to make a landing. I had

been asleep, and the Captain sent a fireman to call me to stand by to make a landing."

Q. "Was the boat being got ready to make a landing?"

A. "She was looking for a landing at the time." Rec. p. 42.

Q. "On this occasion what was the reason for your running close into the left bank?"

A. "For the reason that it was very foggy on the right bank, and our object was to make a landing if it got so foggy we could not see. We could see on that side; no ascending vessels were coming up, if there were we should have stopped."

Q. "Had (Did?) the knowledge that the Juniata was on the river departing have anything to do with it?"

A. "Yes sir, caused us to go over there to give her plenty of room to go by, so she should not disturb the flat we had in tow, for the cargo was perilous. We always, if we have a flat in tow, keep out of the way of steamers, if we know that they are coming, so that the waves will not affect our boat." R. p. 57.

When the Court comes to consider that the flat boat here spoken of by Pursglove, was laden with five hundred barrels of cement, weighing some one hundred and twenty five tons, and almost as heavy as stone itself; that the frail construction of such a boat exposes her to the risk of being sunk, should she encounter the waves which follow the wake of a great ship like the Juniata; that the night of February 10, 1872, was obscured by mist and fog, settling in the bends of the river, likely at any

moment by thickening to obstruct navigation altogether; that the Neafie, taking the cement as she did from on board the Juniata herself, at Jackson Square, that very afternoon, was well advised that the latter was about to start on her voyage down the river at a rate that would enable her speedily to overtake the tug; and that such steam vessels as the Juniata do not and can not make any stops along shore on their way from the port of New Orleans to sea, it cannot hesitate to pronounce the discretion which induced Captain Hopper to followthe left shore as he did, hugging it so close as to avoid the track even of ascending vessels, and prepared too, to stop and land, at a moment's notice, if necessary, prudent commendable and in accordance with the spirit and letter of the law.

The respondents endeavored on the oral argument, to use part of the testimony of Hopper, the master of the Neafie, against the libellant. Hopper having testified how the cement in the flatboat became a total loss in consequence of the collision, described the manner in which he and his crew with the aid of blankets vainly attempted to stop the leaks of the flat; and when he was requested to tell how long it was before she filled, concludes by saying. 'Within twenty minutes of the time she struck." (R. p. 14.) The respondents seizedhold of this answer, and argued very inconsequentially from it. What was done, say they, during these twenty minutes? What could be taking place during all that time on the Neafie? It is evident that her crew did not disclose all the facts, as it is sure, also, that being in a fog, they had lost themselves. But what *is* plain, the res-

pondents urged, but why, nobody but themselves is able to perceive, is, that it was during these very twenty minutes that the Neafie was engaged in making her transit, as Phillips and Reinhardt would have it, from the right bank where she collided with the Juniata, across to the left where the flat actually grounded and sunk.

Now the Court will readily see, that Hopper did not intend that the language so made use of by him should be subjected to this literal interpretation. Neither he, nor any other man, Louis Reinhardt, perhaps alone excepted, without watch in hand, ought to be so judged. An estimate of time and distance under such trying and exciting circumstances, pending a disaster, may very well be slightly inaccurate without discrediting in any just sense the character of the witnesses who made it.

"Entire accuracy of witnesses" (says the Supreme "Court in Gozlee vs. Shute, 18 How. 465), "as to the "direction and position of the boats, in the case of colli- "sion at night is not to be expected. The peril is too "great and absorbing to note and detail events as they "transpired by the officers and hands of either boat."

Indeed it would be contrary to all experience if it were otherwise. On the other hand, what Court is prepared to believe that a flat with one end knocked out in the condition of that now spoken of, heavily loaded too, as this was with five hundred barrels of cement, each of which weighed some five hundred pounds, could possibly be towed from the right bank of the Mississippi, all the way over to the spot on the left, where, it is proved, it finally sunk? And who except ligitants, reduced to the straits of the respondents in this suit, would urge the altogether improbable, if not unnatural conclusion, that

Hopper with his crew—heedless of the perils thus incurred by their own shattered craft, the Neafie—the extent of whose injuries from colliding with the Juniata was as yet necessarily unascertained—risked, notwithstanding, an attempt at salvage of the flat by leaving the right bank, close up to which it is pretended they were when struck, to seek in the dead of night the distant left, over the tubulent current of the Mississippi?

That it is an error to maintain as the respondents are understood to in argument, that as long a time as twenty minutes elapsed between the collision of the Juniata and the Neafie, and the stranding of the flat, and that this interval was occupied by the Neafie in crossing the river with the flat to where the latter sunk, and with the cement of the United States, was lost, may be shown by a recurrence to the facts connected with this incident which are established by the evidence beyond all dispute.

The collision took place three quarters of a mile below Poverty Point, the tug Neafie and the steamship Juniata being both of them descending vessels. The Admiral, another steam-tug, also descended the river on the same evening, and as has been seen actually passed the Neafie almost immediately after the disaster three quarters of a mile under the Point and alongside of the *left* bank. The Juniata was a mile and little over ahead of the the Admiral when the latter passed the Point (R. p. 92); and when the Neafie herself turned Poverty Point, the Admiral was a mile and a half in the rear, but gaining rapidly upon her.

Now Poverty Point is thirty miles below New Orleans. The Juniata departed from Jackson Square at about half past seven P. M. (Testimony of Phillips, R. p. 73); she was consequently, as Simpson her engineer, who was on duty at the time of the collision states, proceeding with the current, from nine to ten miles an hour (p. 84.) The Admiral, on the other hand, which left Cavaroc's brickyard four miles and a half below town at six o'clock, made with her tow, as is proved by the master, Vally, five and a half or six miles an hour. R. p. 67.

It appears, therefore, that the speed of the Juniata was nearly twice as great as that of the Admiral; if the former in sixty minutes, one hour, made ten miles, it took her of course one-tenth of that time to make a mile, or in other words six minutes, and at furthest, seven perhaps, to get that distance below the Point, and where she was seen by the Admiral when the latter doubled it. Again, it is just as plain, that since it took the Admiral sixty minutes or one hour to make six miles, ten minutes must have been consumed by her in travelling a single mile; and to reach the place where the flat boat was wrecked—three quarters of a mile below Poverty Point—between seven and eight minutes, as appears from the answers in this connection, furnished by Captain C. W. Howell, of U. S. Engineers, the witness for the Government in this suit, which are printed as an appendix.

Finally, it follows necessarily, the Court will perceive that the Juniata could not by any possibility have been more than seven or eight minutes out of sight of the Admiral while in the neighborhood of Poverty Point.

The perverse zeal and judgment of the respondent's

witnesses is further to be illustrated where they seek to palliate the utterly indefensible conduct of the Juniata after the collision. The answer of respondent's sworn to by Hoxie, the master (R. p. 8,) avers that after the accident this steamship waited to see if any assistance was wanted, but that no signal of distress of any kind being given, and the tug being apparently undamaged, the ship then proceeded on her voyage. Reinhardt, of course, did his best to sustain this pretension. When asked, how long it was before the engines were started again, he answered, he supposed, "fifteen or twenty minutes" (R. p. 123,) and Phillips the pilot, did not hesitate to deny having kept on his course down the river: "We lay there," says he, "drifting for fifteen minutes, to see if there were any signals given." R. p. 79. But, as is likewise seen in another relation to this suit, the testimony of these two witnesses is discredited by the contradictions in which they are involved with their more careful, if not scrupulous associates. Thus Colton, the mate of the Juniata, when questioned whether the ship remained any length of time to see if the Neafie wanted anything, responds: "I suppose we remained from five to ten minutes before we went away" (R. p. 92); and Mr. Simpson, who since he handled the engine on the Juniata knew better than anybody else, describes what took place in a manner to put an end to all further discussion: "I got two bells as quick as a man could pull "them; that is to stop her, one is to slow, and the other "is to stop; then it must have been four or five minutes; "I hardly think that long, but between three and five "minutes when I got a bell to go ahead again." Record, page 84.

Indeed it is submitted, the facts of this case admit of no doubt. In order to round Poverty Point in her descent of the Mississippi, the Juniata must have starboarded her helm, and kept it in that position until it was too late to correct her tendency to go to port, and avoid striking the Neafie on the *left* bank. Nor is this at all inconsistent with the testimony of the respondents, that their steamship was at one time close up to the *right* bank. (R. pp. 74, 77, 91. Perhaps she was, but this was evidently only *after* the collision. Take their own statements even, and this will be readily understood. The ship was a propeller and by the instrumentality of her screw, had a peculiarity in her steering. She would go faster around to port than she would to starboard. (R. p. 190), according to her quartermaster Thompson, who was at the wheel when the collision occurred, and her helm was "about midships" (R. p. 90), as he expressly says it was, she irresistibly drifted towards the left, and borne by the upward course of the eddy near shore, took the direction of and at last ran into the Neafie. It may also be conceded that Phillips put his helm aport —hard aport (p. 74)—about the time he exclaimed: "What the hell are you doing there?" He had to do it to get clear. Then it was that Hopper on the Neafie, slowed his boat (R. p. 12), and so saved her from entire destruction, the blow glanced, and the steamship obeying her helm, and impelled by her powerful engines, shot over to the right side, and ran close to the bushes, as Colton her mate describes (R. p. 91)—so close that the helm had to be put hard a starboard to get out from the bank—the *right* bank—and to prevent her striking the shore on that side.

It is almost a work of supererogation to examine any further the inaccuracies, inconsistencies, and misstatements in which most of the witnesses for the respondents are involved. It needs no argument, for instance to account for Reinhardt's not having seen as he says, lights on the Neafie when he came up after the collision for ten minutes on the Juniata s deck, because it is abundantly established that the immediate effect of the collision was to jar the tug so violently as to extinguish all the lights on board (R. pp. 12, 22, 32,) and leave the crew in total darkness. And what weight will be allowed to the oath of Phillips that there was no light on the flatboat, and also that *he* saw no white light on the Neafie (R. p. 420) when we have the testimony of Williams that there really was a watchman on the flat when the collision occurred (R. p. 43), in corroboration of that of Miller that he did have a light (p. 54); together with the libellant's statement that he saw this watchman standing on the deck of the flatboat when he himself was on the deck of the tug. R. p. 61. The evidence of Pursglove, Hopper, McVey, McFadden, Williams and Miller on the Neafie, is indeed unanimous that she carried the usual signal lights, red and green, a green light on the starboard and a red light on the port, and two white lights—one hanging under the other twenty or twenty-five feet from the water's edge on the smoke-stack (R. p. 11) visible, according to Hopper, within thirty degrees of the circle of the horizon. Only fifteen minutes before the collision McVey had noticed them burning in good order (R. p. 23); and Miller the deck hand on the Neafie, whose duty it was to trim them, had performed it only an hour

earlier, and at the moment of the collision actually (R. p 43) looked at these lanterns and saw them lighted and burning as he passed forward.

Nor can a Court of Admiralty be urged with success to decide that such a steam harbor job and tugboat as the Neafie, 90 feet long and 72 tons in measurement (R. p. 11), was in fault when the collision now before the Court happened, for not keeping a good lookout, as required by law, when it is in proof that the whole crew of seven men were on duty, the master, two deck hands, engineer, fireman, cook and watchman—R. p. 11—all at their posts, including Miller the extra hand, who had been sent to make a landing and was engaged on deck in looking for one—R. p. 42. Not to mention the unfortunate libellant himself, who out of unusual caution, on hearing a whistle up the river, had again repaired to the roof of his boat, where watching the Juniata as she descended the left bank of the river (R. p. 55), and having stooped to direct the master to run nearer the left bank—he was in the act of rising, when the Juniata struck the tug, rolled her from under him, and hurled him head foremost against the steamship, and thence to the deck of the Neafie (R. p. 11), inflicting upon him grievous personal injuries. The Farragut 10 Wall. 338.

There is no doubt that a proceeding *in rem* will lie in a Court of Admiralty for the redress of a tort in such a case where the cause of the injury, like the Juniata, is the subject of a maritime lien.

In the case of the Rock Island Bridge (6 Wall. p. 25) this is understood to be the general doctrine laid down by the Supreme Court of the United States, as in-

cluding all torts committed on navigable waters, the Court holding that:

"For the redress of these torts the Court of Admi-
"ralty may proceed *in personam*, and when the cause of
"the injury is the subject matter of a maritime lien, may
"also proceed *in rem*. The latter proceeding is the
"remedy afforded for the enforcement of liens of that
"character."

And in the recent case of the Sea Gull, where it was alleged that the wrongs complained of, injuries to the libellant terminating in her death, were occasioned by the collision of the steamer Sea Gull with the steamer Leary and that the collision occurred through the fault of the Sea Gull, and where the respondent filed a plea to the jurisdiction, averring that if the Court had jurisdiction, the proceedings should be *in personam* and not *in rem*, the late Chief Justice overruled both pleas and decided as follows:

"It is not easy to see, upon what principle *wrongs
to persons* can be distinguished in respect to relief in Ad-
"Admiralty from *injuries to things*. Both caused damage
"to parties, to be compensated in money; and both are
"occasioned by similar wrongful acts. There is, in the
"second volume of Wynes' Life of Sir Leoline Jenkins,
"a collection of his official letters on Admiralty questions,
"submitted to him from time to time by the Lords Com-
"missioners, and other functionaries of the Government,
"in one of which—page 774—he says that the freighters,
"owners and masters of certain English vessels have a good
"action of *spoil and damages* against a dutch caper
"(Privateer) that detained and robbed them, and might
"maintain the action in the Court of Admiralty, by pro-

"cess against the offending ship, and her commanders for "damages occasioned by the loss of goods, and of time "and by the violence she had suffered. This is perhaps "the earliest instance in which *right of action in admi-* "*ralty* against a ship or master, for personal injuries to "individuals on another ship, was asserted. It might be "going too far if we were to give much weight to so an- "cient an authority, even of so great a judge, if there "were anything in the doctrine contrary to sound reason. "But the same point has been determined by the deci- "sion of a very enlightened and able judge, (Sprague). "In the case of *The Maverick*, it was held by him that "a steamer colliding with a vessel and in fault, was lia- "able for personal injuries occasioned by the collision to "the libellant, who was a mate upon the other vessel. "This case is in point upon the question of remedy and "I accept this authority as sufficient for the case before "us upon that question." 2 American Law Times Rep. pp. 15, 16.

Again, in the case of *The Highland Light* where a libel was filed for damages occasioned by steam escaping from a collapsed steam chimney of the steamer *Highland Light*, and causing the death of William Price the husbond of one and the father of the other libellant (2 American Law Times Rep. p. 119, the decision in in the Sea Gull was referred to with approbation, as holding that the Admiralty Jurisdiction extends to the redress of injuries to persons on one vessel, caused by the negligence of those charged with the navigation of another, and the Chief Justice used this language:

"Indeed the jurisdiction for marine torts in Admi- "ralty may be said to be co-extensive with the subject.

"It depends upon the locality of the wrong, not upon its "extent, character, or the relations of the person "injured."

"The Admiralty may be styled not improperly, the "human Providence which watches over the rights and "interests of those "who go down to the sea in ships, "and do their business on the great waters." I enter- "tain no doubt therefore upon the general question of "jurisdiction."

In the case of *The Maverick*, referred to and cited as a precedent by the Chief Justice, where in her passage the Steamer Southern ran against a warp from on board the brig Maverick and by means thereof, broke the leg of the libellant and inflicted other injuries.

Judge Sprague, in delivering the decree of the District Court said: "I am of the opinion that she (the "Southern) must be responsible, even for accidental dam- "ages occasioned thereby." Sprague Dec. Volume 1, pp. 24, 31.

It becomes proper at this stage of the argument to refer more particularly to some of the authorities which maintain the jurisdiction of the Admiralty over suits for consequential damages, as are these which the libellant is now seeking to recover.

In the Betsy Caines, 2 Hagg. pp. 29—30, which which was a case of collision for running down the Minerva, a smack having a cargo of fish on board and alleged to be engaged at time in a salvage service, Lord Stowell said:—

"No authority has been mentioned by which the "Court might be induced to consider itself excluded from "entertaining a question of consequential damages; and

"I cannot presuade myself that the jurisdiction is "so limited in this respect as the argument would "suggest."

And in the Yorkshireman, Forman, 2 Hagg. p. 30, also a case of collision. in which it was alleged that a fishing smack was run foul of by the Steamboat, while the smack was on a voyage from London to Norway to receive a cargo of lobsters, and that from her damage it became necessary to hire another smack for that purpose; the British High Court of Admiralty, having condemned the Yorkshireman, directed reference to the Registrar and Merchants to report the amount of freight paid to vessel substituted for the fishing smack "in order that the same might be allowed for consequential damages."

In this couutry also the right to resort to Admiralty process, has been held not to be limited to trespasses against the person, but to extend also to suits for the recovery of consequential damages resulting from acts, which, like those in the case before the Court, are tortious.

In Chamberlain et al. vs. Chandler, 3 Mason, 243, Mr. Justice Story maintained the admiralty jurisdiction in suits of this character, in an eloquent opinion, delivered by him in that early case. It had been then intimated that the acts of the master which were complained of, though wrong in morals, were yet acts which the law does not punish; if the person is untouched, if the acts do not amount to an assault and battery, they are not to redressed. The law would look on them as unworthy of recognizance. And although the master might inflict the

most severe mental sufferings, in the most tyrannical manner, yet he commits nothing within the reach of civil jurisprudence. But the law, according to Judge Story, "involves no such absurdity. It is rational and just, it "gives compensation for mental sufferings occasioned by "acts of wanton injustice, equally whether they operate "by way of direct or consequential damages."

So in Plummer vs. Webb, 4 Mason, 380, it was held in the same Court, that a father might maintain an action for damages for the tortious abduction or seduction of his minor son. And the same doctrine was laid down by Judge Ware in the District of Maine (in Steele vs Thatcher, Ware R. 91), and the action held to be maintainable, although the son at the time of the abduction was not an inmate of his father's family, and although he had been left mainly to support himself by his own labor, unless it also appeared that the father had abandoned all care of him. See alsc Conk. U. S. Adm. vol. 1, pp. 447, 448, at words Consequential Injuries.

To conclude reference to authorities on the topic immediately under discussion, actions are also maintained, for the wrongful conversion of a whale on the high seas, and damages allowed. Thus where whales are captured for a time with some of the *indicia* of ownership, such as what is termed a waif, which is generally a pole, or oar with a signal on it, and as is often the case, where they are anchored, in all such cases, the right of property remains in the original takers. 2 Parson's Maritime Law, p. 350.

In Brown vs. Ashley, a case of the kind here referred to, in the U. S. District Court for the District of Massachusetts, the present District Judge, Lowell, held that the

sum to be ascertained was the value at New Bedford, the controlling market of this country, in July, 1858, (the time of the conversion of the whale), of the oil and bone made, or w*hich might have been made* from it, less the necessary average expenses of cutting in and boiling, freight, insurance, casks, and other proper charges; and as the transaction is assumed to be a cash transaction, on the day of the conversion, less the interest on the supposed outlay for the time of an average direct voyage home, to which result is to be added interest from the day of conversion. Judge Lowell refused a different ruling, holding there must be a general rule, and to admit the consideration of the actual damage to the plaintiff in that particular case would open it to a vast deal of evidence of a very uncertain nature. It was admitted that Tabor vs. Jenney (1 Sprague's Decisions, 315), appeared to adopt a somewhat different rule, but that case was reported by the assessor, and argued by counsel upon the basis of the home price of the cargo that actually arrived in libellant's vessel, and perhaps for some peculiar roason. Accordingly in the latter case of Bartlett vs. Budd, decided in the same court, the rule of damages laid down in Brown vs Ashley was adhered to. (Id. note.)

The circumstances and condition in life of the libellant, at the time he received the injury heretofore mentioned, require now to be brought to the attention of the Court.

George Pursglove was forty-four years of age in the month of July, 1872 (R. p. 54). He is a married man and has six children living. By the practice of industry and economy, he has become the owner of the homestead

where he resides with his family in the Parish of Jefferson (R. p. 47), and whither the Commissioner of the United States repaired, to receive, at his bedside, his oath to the libel in this case.

He is also the owner of the Neafie, and of a barge for the transportation of freight up and down the coast, buys and sells flatboats, hires barges and moves bulk freights, &c. (R. p. 62). The business of the Neafie was a productive and even a lucrative one before the collision, and the libellant depended upon it for the maintainance of his family. (R. p. 61) To move a flat in the harbor, this job boat would get ten dollars. (R. p. 58). To move one up or down the river, from ten to one hundred and one hundred and fifty dollars. For moving large vessels, the price varied with their tonnage, and for the towage of rafts, the compensation ranged sometimes as high as seven or eight hundred dollars. (R. pp. 58-59). For towing a raft from Grand Gulf to the Ocean Mills, Jefferson City, March last, which occupied her six days, the Neafie received nine hundred dollars (R. p. 21); and for the conveyance of a fleet of coal boats to Bayou Lafourche, for planters, in 1871 (R. p. 19). seventeen hundred dollars were paid her. To sum up her earnings, in 1867, they amounted to nineteen thousand four hundred and $\frac{71}{100}$ dollars ($19,430 $\frac{71}{100}$). In 1868, seventeen thousand four hundred and thirty-five $\frac{50}{100}$ dollars ($17,435 $\frac{50}{100}$). In 1869, twenty thousand seven hundred and ninety-seven $\frac{50}{100}$ dollars ($20,707 $\frac{50}{100}$). In 1870, twenty thousand six hundred and seventy-two $\frac{37}{100}$ dollars (20,672 $\frac{37}{100}$). His barge was worth to the libellant from $150 to $200 a month in the business season. When the collision before the Court happened, these resources, it appears, were well

in hand, and the libellant was in debt—a mere trifle, for a man in his situation—four or five hundred dollars. (p. 62). The Neafie had been repaired and the work just paid for. (R. p. 62). His physical condition was first rate: to borrow the expression of Doctor Holliday, who has been acquainted with him for nineteen or twenty years: "That of a vigorous, active man." p. 48.

Edward M. Ivens, a dealer in machinery, who was in the habit of meeting Pursglove every day, in connection with others in the same business with the latter, attests his stirring habits and almost indefatigable industry. Ivens says: "he attended to all branches of the business except the real management of the labor on the boat:" and the witness goes on to describe what he meant.

"Attending to the finances, making contracts for his "boat tow; paying and hiring his crew, soliciting busi- "ness' and everything connected with the towage line— R. p. 64.,,

All this, according to Ivens, "requires much activity" (R. p. 54), "I think" he concludes, "Mr. Pursglove, "knowing him as I do, is one of the most active men in the city of New Orleans." "And the Court is asked to note the previous declaration of the same witness, made with great deliberation: "I think he (Pursglove) did the first business of any single tugboat in the harbor." R. p. 64.

Another witness, John Patton, who is necessarily well informed, because he sells hay for the largest dealers in New Orleans, the greater part of that crop coming to the city, being on barges and flatboats, always requiring towage to transfer it, knew Pursglove well, and thoroughly proved up with Ivens (R. p. 65), the good will the former

had acquired in his business. He showed the absolute importance and necessity of acquiring such good will in the business. Pursglove, he said, was "very vigilant. (R. p. 164) and appeared to give it "his whole attention.

To bring this view of the case to a close, the Court is asked to consider the libellant's own description of his daily toil, in the constant competition in which he was compelled to struggle against the job boats, his rivals in the harbor, running about and soliciting patronage; finding out where vessels have to be moved in order to get work; making acquaintances everywhere and seeking business popularity; and to do all this "every morning of his life," starting from Carrollton, some six miles distant from New Orleans, and coming—partly in the cars, partly on foot—all the way down the New Orleans levee. R. p. 59.

The result of the accident to the Neafie, the subject of this litigation, was to interrupt and break up the business (R. p. 62) of Pursglove, just described, seriously damage his tug, and prostrate him wounded, and disabled probably for life. In April, 1872, he had run in debt already for the sum of two thousand five hundred dollars—and his losses continuing—he offered to show on the trial, but was prevented by the objection of respondents—that his liabilities were as high as four thousand dollars. When he first testified, his boat did not even make her running expenses (R. p. 50); and while confined to his bed he was compelled to employ a man to look after outdoor work in the vain endeavor to replace his own labor and enterprise.

It is therefore submitted, that a decree for the full amount asked for in the libel as damages, twenty thousand dollars, will not do more than enable him, by paying his debts, to recover his losses and settle his disordered accounts.

A careful survey made by experts, Lester and Eaken (pp. 50, 54), establishes without doubt that the actual injury done to the Neafie reaches twelve hundred and five dollars. (See Exhibit A. p. 3). The house or cabin was broken loose: the decks of the boat badly sprung, requiring to be spiked down and recaulked; the bits were knocked loose, and the deck frame, together with other injury which is duly described.

We turn now to the libellant himself, who was carried immediately to his home upon reaching the city, where he was attended by a surgeon and physician of high character, Prof. Samuel Logan. The latter says: "I "found him lying down unable to turn in bed, with a "slight febrile excitement, and heated head, apparently "recovering from a severe accident, with two ribs on one "side fractured, and one on the other, and severe contu- "sions involving the head, neck, shoulders and back." R. p. 46.

For about six weeks the wounded man was confined to his bed, and incurred a bill to Dr. Logan, for attendance upon him. amounting to some two hundred and fifty dollars. (R. p. 47). The bill of the apothecary, Tebo, durin the same period, is $69 25. (See bill of Tebo at p. 49.)

But what has been said concerning damages, conveys only a very partial and imperfect view of the injury which the libellant has suffered.

By reference to the testimony of Dr. Logan and Dr. Dan'l C. Holliday, also a scientific witness of the first standing, it will be seen that libellant's terrible fall from the roof of the pilot-house of the Neafie, immediately superinduced concussion of the brain and spinal cord (pp. 46. 48, 111), accompanied by partial parlysis.

How such shocks and jars as the libellant suffered, operate upon the spinal cord, is a subject clouded in obscurity. If a magnet be struck, the magnetic force may be shaken or concussed out of the iron; and if the spine be badly jarred, it is found that the nervous force is, as it were, shaken out of the man, and in some way lost. But how, and proceeding by what changes of structure, this is brought about, is said to be as much hidden, as the change effected in the magnet when the latter is struck.

(Erichsen's Science and Art of Surgery, pp. 360, 362, 363, 365, 367, 368, at words Concussion from indirect violence.)

The standard writer to whom reference is here made, dwells upon the importance of devoting minute attention to every injury of the spine, and upon the insidious manner in which injuries at first appearing only slight, advance and become dangerous, and often fatal.

"There is great variation in the period," he goes on to say, "at which the more serious, persistent, and posi-
"tive symptoms of spinal leson begin to develop them-
"selves. In some cases they do so immediately after the
"injury; in others, not until several weeks perhaps even
"months have elapsed; but during the whole of this in-
"terval, whether it be of short or of long duration, the suf-
"ferer's condition, mentally, and bodily, has undergone a

"change. His friends remark, and he feels that he is not "the man that he was; he has lost bodily energy, men- "tal capacity and business aptitude. He looks ill and "worn—often becomes irritable and easily fatigued. He "still believes that he has sustained serious or perma- "nent hurt; tries to return to his business, finds that he "cannot apply himself to it; takes rest, seeks change of "air and scene, undergoes medical treatment of various "kinds, but finds no avail. His symtoms become pro- "gressively more and more confirmed, and at last he re- "signs himself to the conviction that he has sustained a "more serious bodily injury, than he had at first be- "lieved, and one that has, in some way or other, broken "down his nervous powers, and has wrought the change "of converting a man of mental energy, and of active "business habits, into a valetudinarian, utterly unable "to attend to the ordinary duties of life."

In another place, Erichsen describes the gait of such a patient: "He walks more or less unsteadily; gener- ally uses a stick, or if deprived of that, is apt to lay his hand on any article of furniture that is near him, with the view of steadying himself. He keeps his feet some- what apart, so as to increase the basis of support and consequently walks in a straddling manner."

The limits which properly belong to argument, for- bid further inquiry in this connection. The access which the Court has to scientific knowledge of all kinds, will supply the omissions which must necessarily here be found. In the interest of justice, the libellant, himself, attended upon the trial of this case, and offered the District Court an opportunity for observing the sym-

toms from which he suffered, and which induced him earnestly to press his appeal for relief from wrong. Moreover, the very day before the argument, in the District Court fourteen months after the collision, Dr. Holliday was again examined, and his testimony given with great intelligence, based, as it is, upon acknowledged professional experience and information, affords the most enlightened aid in this case in reaching a correct conclusion.

Dr. Holliday says, when asked where the injury (to libellant) was, when he first saw him:

"I think the injury was on the head—the blow was "on the head and the injury transmitted to the spinal "column. I think he must have fallen forward on his on his head." R. p. 113.

Again, when asked what the meaning of lesion is in such cases, he answers.

A. "Injury; garbling of functions." R. p. 114.

Q. "There has been lesion produced in this case?"

A. "I think so, and I fear permanent lesion."

Q. Can you describe his gait? Compare it with his natural gait before?"

A. "He always in walking has to increase the base "—carry his legs wide apart; has an uncertainty in get-"ting contact with the ground; vascillating way of rais-"ing his legs and putting them down, as if not aware of "the rapidity with which his feet can come in contact "with the pavement. A general unsteadiness of gait in-"stead of anything else." R. p. 114.

Finally, Q. "And such a gait as you describe is one entirely where lesion has been produced?"

A. "In the spine—yes."

Q. "Generally speaking, he is not the man he was before?"

A. "O dear no, sir." R. p. 114.

Examined since the appeal in the Circuit Court, and some three years and a half after the collision—Dr. Holliday describes again the condition of the libellant. His general health, although apparently good, has altered somewhat, and has not improved. Any favorable change in his condition, physical or mental is in the opinion of the Doctor not to be expected. His power of locomotion, if it has improved at all, has not improved much. The case, the Doctor thinks clearly, is one of chronic lesion of the brain, and the manifest derangements of locomotion and intelligence are due to the great shock and, consequent injury to the brain caused by the libellant's fall in the collision with the Juniata on the 10th of February, 1872. His expression is now purposeless, and his appearance that of a man who has lost decision of character and judgment. In a word we are given to understand he is wreck of his former self, and the Doctor says the effects of his injury are progressing "Before the injury says this witness, "he was a man possessing more than ordinary share of perseverance, industry, activity and physical vigor. Now he is a man whose mental activity appears to have become as unsteady and vascillating as his gait; he is physically a cripple." p. 151.

The proctors for the libellants, under a deep sense of professional responsibility, now submit this case, as one of

no small moment. They are conscious of the disadvantages under which it must labor, from the imperfect manner in which they have discussed it; but they are persuaded of the justness of the suit of their client, and of his right to recover the entire sum he asks for, twenty thousand dollars. They are not apprehensive that the Court will indulge in various estimates, and pronounce, in lower numbers, for other damages, because the evidence shows the injury and wrong which have been inflicted upon the libellant to be IRREPARABLE.

Respectfully submitted,

CARLETON HUNT,
DURANT & HORNOR,
Proctors for Libellant.

APPENDIX.

Answer of Captain C. W. HOWELL, *to certain questions submitted to him by the libellant, after the oral argument, and incorporated in this brief.*

U. S. ENGINEERS OFFICE, N. O., La.,
May 14, 1871.

CAPT. GEO. PURSGLOVE:

Dear Sir:—My answer to questions one and two, see paper attached, based on the statements made in attached paper as follows.

1—After rounding Poverty Point, running at a speed of from nine to ten miles per hour, it took the Juniata between six and seven minutes to get (1) mile below the Point.

2—The Admiral going at a speed of from five and one-half to six miles per hour, rounding Poverty Point, would have reached a point ¾ of a mile below, in between seven and eight minutes.

Juniata could not have been more than seven minutes ahead of, or out of sight of the Admiral, while in the neighborhood of Poverty Point.

Very truly yours,

C. W. HOWELL,
Capt. of Top. Eng.

QUESTIONS.

A collision took place, say three-quarters of a mile below Poverty Point, in the Mississippi, between the steamship Juniata and the steam-tug Neafie, both boats descending the river.

The steamtug Admiral was also descending the river and passed the Neafie three-quarters of a mile under Poverty Point, alongside the left bank, immediately after the collision.

The Juniata was one mile and a little over ahead of the Admiral when the latter turned the Point. Rec. p. 92.

When the Neafie turned the Point the Admiral was one and a half miles in the rear, but gaining all the time on the Neafie.

The Juniata was going at a speed of nine or ten miles an hour.

Poverty Point is thirty miles below New Orleans, and the Admiral was going at the rate of five and a half to six miles an hour.

Q. 1 What time elapsed to enable the Juniata after rounding the Point to reach the position of one mile and little over ahead of the Admiral, when the latter turned the Point?

Q. 2 The Admiral did not stop at all. What time did it take her to travel three-quarters of a mile from Poverty Point down the river to where she found the Neafie after the collision?

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Chittock

IN THE

Supreme Court of the United States.

THE PHILADELPHIA AND SOUTHERN MAIL STEAMSHIP COMPANY *vs.* GEORGE PURSGLOVE AND THE UNITED STATES.	No. 129.

Assignment of errors in behalf of the Philadelphia and Southern Mail Steamship Company, appellants.

1. Because the Circuit Court of the United States erred in decreeing that both vessels were in fault for the collision, whereas they should have decreed the Neafie was alone to blame.

2. Because the damages awarded to the libellant Pursglove were excessive.

3. Because damages for personal injuries suffered by a libellant, whose negligence was contributory to the collision, are not to be apportioned between two vessels where both are decreed to be in fault.

4. Because a libel in rem cannot be sustained for injuries to the person of one of the crew of the colliding vessels.

MORTON P. HENRY,
For Appellants.